

**The Draft Constitution
Or
The Necessary Evidences for it**

Part2

**This book has been issued by
*Hizb ut-Tahrir***

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The Necessary Evidences for it**

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(The Economic System, The Education Policy, Foreign Policy)

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﴿ وَأَنْزَلْنَا إِلَيْكَ الْكِتَبَ بِالْحَقِّ مُصَدِّقًا لِمَا بَيْنَ يَدَيْهِ مِنَ الْكِتَبِ وَمُهَيْمِنًا عَلَيْهِ فَاحْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ عَمَّا جَاءَكَ مِنَ الْحَقِّ لِكُلِّ جَعْنَانٍ مِنْكُمْ شِرْعَةٌ وَمِنْهَا جَاجًا وَلَوْ شَاءَ اللَّهُ لَجَعَلَكُمْ أُمَّةً وَاحِدَةً وَلَكِنَ لَيَبْلُوْكُمْ فِي مَا أَنْذَكُمْ فَاسْتَقِوْا الْخَيْرَاتِ إِلَى اللَّهِ مَرْجِعُكُمْ جَمِيعًا فَيُنَيِّبُكُمْ بِمَا كُنْتُمْ فِيهِ تَحْكَمُونَ ﴾ وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ وَأَحْذِرُهُمْ أَنْ يَفْتُنُوكَ عَنْ بَعْضِ مَا أَنْزَلَ اللَّهُ إِلَيْكَ فَإِنْ تَوَلُوا فَاعْلَمُ أَنَّمَا يُرِيدُ اللَّهُ أَنْ يُصِيبَهُمْ بِبَعْضِ ذُنُوبِهِمْ وَإِنَّ كَثِيرًا مِنَ النَّاسِ لَفَسِقُونَ ﴾ أَفَحُكْمُ الْجَاهِلِيَّةِ يَقْعُونَ وَمَنْ أَحْسَنُ مِنَ اللَّهِ حُكْمًا لِقَوْمٍ يُوقَنُونَ ﴾ [المائدة]

“And We have revealed to you, [O Muhammad], the Book in truth, confirming that which preceded it of the Scripture and as a criterion over it. So judge between them by what Allah has revealed and do not follow their inclinations away from what has come to you of the truth. To each of you We prescribed a law and a method. Had Allah willed, He would have made you one nation [united in religion], but [He intended] to test you in what He has given you; so race to [all

that is] good. To Allah is your return all together, and He will [then] inform you concerning that over which you used to differ. (48) And judge, [O Muhammad], between them by what Allah has revealed and do not follow their inclinations and beware of them, lest they tempt you away from some of what Allah has revealed to you. And if they turn away - then know that Allah only intends to afflict them with some of their [own] sins. And indeed, many among the people are defiantly disobedient. (49) Then is it the judgement of [the time of] ignorance they desire? But who is better than Allah in judgement for a people who are certain [in faith]. (50)".

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The Economic System

Article 123

The management of the economy is to take in consideration the viewpoint about the targeted society when considering the fulfilment of the needs. So what the society ought to be should be made the basis for the fulfilment of the needs.

This article is deduced from several evidences and the *Shari'ah* rule can be deduced from single or multiple evidences. It has been deduced from the limitation of the ownership of things by a specific method, and the limitation of the causes of ownership to particular causes, and the limitation of how wealth can be invested according to a particular method, and from the prohibition of certain things and actions, and so the management of the economy has been deduced from the evidences for these four issues.

The management of the economy which has been deduced from these evidences is that it is obligatory that the view regarding wealth, from the angle that it fulfils the needs must be connected to the *Shari'ah* rule regarding that wealth, and built upon it. Wheat and honey are considered to be from the wealth, because Allah (swt) made the two of them permitted. Whereas cannabis and alcohol are not considered to be from the wealth, since Allah (swt) made the two of them forbidden. The money which is used to purchase, and that which is paid as a salary, is from the wealth since the *Shari'ah* permitted earning money in these two situations, whereas stolen money and money earned through a void contract is not considered to be from the wealth because the *Shari'ah* forbade them both. So the *Shari'ah* rule must be examined when considering how to fulfil the needs, and it is obligatory that it is the

basis for the consideration of the reality of the wealth fulfilling a need, or in other words, the basis upon which the wealth is produced and consumed. This is the meaning of the article when it says that the management of the economy is the view towards how the society should fulfil the needs, since what the society should be upon, in other words, what the relationships between the people should be based upon, is that these relationships should be restricted by and proceed according to the *Shari'ah* rules. Therefore, it is obligatory that the consideration of what the society should be upon, in other words, it being restricted by the *Shari'ah* rules, is present when considering how to fulfil the needs, and it should be connected to the *Shari'ah* rules and based upon them, irrespective of whether that is regarding the production of the wealth or its consumption.

Accordingly, the origin of wealth in the system of Islam is that in order for it to be considered an economic matter permitted to be produced and consumed, depends on what the society should be, in other words, the restriction of the relationships between people by the *Shari'a* rule. And based upon this the wealth is examined from the angle of it fulfilling the need of human beings, the individual or the society, and upon this basis production and consumption occurs.

Though the restriction to the *Shari'ah* rule is the basis, which is general with regards to the obligation of making the *Shari'ah* rule decide every action of the Muslim, the *Shari'ah* did not leave the management of the economy general based upon general evidences such as the words of Allah (swt):

﴿وَمَا أَنْذَكُمُ الْرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا﴾

“And whatever the Messenger has given you - take; and what he has forbidden you - refrain from.” (TMQ 59:7). Rather

it came with detailed evidences specific to the distribution of wealth and how to fulfil the needs with it, which are the evidences which limit the method of ownership, its causes, and investment, and prohibition of certain things and actions. Therefore, the management of the economy in Islam is not the consideration of wealth from the angle of how it can fulfil the need alone, but rather it also looks at whether it is permitted, and whether the need which it fulfils is permitted; in other words, it is based upon the consideration of the wealth from the angle of the relationships between people restricted by the *Shari'ah* rules.

Article 124

The primary economic problem is the distribution of wealth and benefits to all of the subjects of the State, and facilitating their utilisation of this wealth and benefits, by enabling them to strive for them and possess them.

This article explains that the economic problem has two halves: the first being the need of the people, in other words, guaranteeing that the wealth of the country reaches every individual subject such that no one is prohibited from it and secondly, facilitating every individual subject to possess and benefit from this wealth.

As for the first half, its evidences are the verses and narrations that came regarding the matters of the poor people, the needy and the travellers. There are several of these evidences of varying nature such that they focus the attention on the importance of this problem.

As for the verses, Allah (swt) says:

وَأَطِعُمُوا الْبَائِسَ الْفَقِيرَ

“And feed the miserable and poor.” (TMQ 22:28)

﴿ وَمَا تُنْفِقُوا مِنْ خَيْرٍ يُوَفَّ إِلَيْكُمْ وَأَنْتُمْ لَا تُظْلَمُونَ ﴾
الَّذِينَ أَخْصَرُوا فِي سَبِيلِ اللَّهِ ﴿ [البقرة ٢٧٣-٢٧٤] وَقَالَ: ﴾ إِنَّمَا الْصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسَاكِينِ وَالْعَمَلِينَ عَلَيْهَا وَالْمُؤْلَفَةِ قُلُوبُهُمْ وَفَ أَرِقَابِ وَالْغُرَبِينَ وَفَ
سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ ﴾^١ ﴿ [التوبه ٦٠] وَقَالَ: ﴾ مَا أَفَاءَ اللَّهُ عَلَى رَسُولِهِ مِنْ أَهْلِ
الْقُرْبَى فَإِلَهُهُ وَلِرَسُولِهِ وَلِذِي الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينِ وَابْنِ السَّبِيلِ ﴾^٢ ﴿ [الحشر ٧]
إِلَى أَنْ يَقُولَ: ﴾ لِلْفُقَرَاءِ الْمُهَاجِرِينَ ﴾^٣ ﴿ [الحشر ٨] وَقَالَ: ﴾ إِنْ تُبَدِّلُوا الْصَّدَقَاتِ
فَنِعِمًا هِيَ وَإِنْ تُخْفُوهَا وَتُؤْتُوهَا الْفُقَرَاءَ فَهُوَ خَيْرٌ لَكُمْ ﴾^٤ ﴿ [البقرة ٢٧١] وَقَالَ:
وَعَلَى الَّذِينَ يُطْبِقُونَهُ فِدَيَةً طَعَامُ مِسْكِينِ ﴾^٥ ﴿ [البقرة ١٨٤] وَقَالَ: ﴾ فَمَنْ لَمْ
يَسْتَطِعْ فَإِطْعَامُ سَيِّئَنَا ﴾^٦ ﴿ [الجادلة ٤] وَقَالَ: ﴾ وَيُطْعِمُونَ الظَّعَامَ عَلَى
حُبِّهِ مِسْكِينَا وَيَتِيمَا وَأَسِيرَا ﴾^٧ ﴿ [الإنسان] وَقَالَ: ﴾ أَوْ إِطْعَمْ فِي يَوْمٍ ذِي مَسْعَبَةٍ
يَتِيمًا ذَا مَقْرَبَةٍ ﴾^٨ أَوْ مِسْكِينًا ذَا مَنْزَلَةٍ ﴿ [البلد] وَقَالَ: ﴾ قُلْ مَا أَنْفَقْتُمْ مِنْ
خَيْرٍ فَلَلَّوِ الدِّينُ وَالْأَقْرَبَيْنَ وَالْيَتَامَى وَالْمَسَاكِينِ وَابْنِ السَّبِيلِ ﴾^٩ ﴿ [البقرة ٢١٥] وَقَالَ:
وَلَدِكَنْ أَلْبَرَ مَنْ ءاْمَنَ بِاللَّهِ وَآتَيْوْمَ الْآخِرَ وَالْمَاتِيَّكَةَ وَالْكَتَبِ وَالنَّيْعَنَ وَءَائِيَ
وَلِدِكَنْ أَلْبَرَ مَنْ ءاْمَنَ بِاللَّهِ وَآتَيْوْمَ الْآخِرَ وَالْمَاتِيَّكَةَ وَالْكَتَبِ وَالنَّيْعَنَ وَءَائِيَ

الْمَالَ عَلَىٰ حُبِّهِ ذَوِي الْقُرْبَىٰ وَآتَيْتَنَّمِي وَالْمَسِكِينَ وَابْنَ السَّبِيلِ وَالسَّاِلِينَ ﴿١٧٧﴾
 [البقرة ١٧٧] وقال: ﴿أَوْ كَفَرَةٌ طَعَامُ مَسِكِينَ﴾ [المائدة ٩٥] وقال: ﴿فَكَفَرَتُمْ بِإِطْعَامِ عَشَرَةِ مَسِكِينَ﴾ [المائدة ٨٩] وقال: ﴿وَفِي أَمْوَالِهِمْ حَقٌ لِّلصَّابِلِ وَالْمَحْرُومِ﴾
 ﴿وَالَّذِينَ فِي أَمْوَالِهِمْ حَقٌ مَّعْلُومٌ﴾ [الذاريات] وقال: ﴿وَالَّذِينَ فِي أَمْوَالِهِمْ حَقٌ مَّعْلُومٌ﴾ ﴿١٢﴾
 وَالْمَحْرُومِ

“And whatever you spend of good - it will be fully repaid to you, and you will not be wronged; [Charity is] for the poor who have been restricted for the cause of Allah, unable to move about in the land.” (TMQ 2:272-3)

“Zakah expenditures are only for the poor and for the needy and for those employed to collect [Zakah] and for bringing hearts together [for Islam] and for freeing captives [or slaves] and for those in debt and for the cause of Allah and for the [stranded] traveller.” (TMQ 9:60)

“And what Allah restored to His Messenger from the people of the towns - it is for Allah and for the Messenger and for [his] near relatives and orphans and the [stranded] traveller.” (TMQ 59:7) until He says,

“For the poor emigrants.” (TMQ 59:8)

“If you disclose your charitable expenditures, they are good; but if you conceal them and give them to the poor, it is better for you.” (TMQ 2:271)

“And upon those who are able [to fast, but with hardship] - a ransom [as substitute] of feeding a poor person [each day].” (TMQ 2:184)

“And he who does not find [a slave] - then a fast for two months consecutively.” (TMQ 58:4)

“And they give food in spite of love for it to the needy, the orphan, and the captive” (TMQ 76:8)

“Or feeding on a day of severe hunger; To the orphan with claims of relationship; Or a needy person in misery.” (TMQ 90:14)

“Say, "Whatever you spend of good is [to be] for parents and relatives and orphans and the needy and the traveller.” (TMQ 2:215)

“But [true] righteousness is [in] one who believes in Allah, the Last Day, the angels, the Book, and the Prophets and gives wealth, in spite of love for it, to relatives, orphans, the needy, the traveller.” (TMQ 2:177)

“Or an expiation: the feeding of needy people.” (TMQ 5:95)

“So its expiation is the feeding of ten needy people.” (TMQ 5:89)

“And from their properties was [given] the right of the [needy] petitioner and the deprived.” (TMQ 51:19)

“And those within whose wealth is a known right; For the petitioner and the deprived.” (TMQ 70:24-5)

As for the narrations, the Messenger of Allah ﷺ said:

«وَأَيُّمَا أَهْلٌ عَرْصَةً أَصْبَحَ فِيهِمْ أَمْرُؤٌ جَائِعٌ فَقَدْ بَرِئَتْ مِنْهُمْ ذَمَّةُ اللَّهِ تَعَالَى»

“Whenever the people of an area wake up with a hungry person amongst them, then Allah’s covenant and protection to them is absolved.” (reported by Ahmad from Ibn Umar, and authenticated by Ahmad Shakir).

And it is narrated from him ﷺ from what he related from Allah:

«مَا آمَنَ بِي مَنْ بَاتَ شَبْعَانَ وَجَازَهُ جَائِعٌ وَهُوَ يَعْلَمُ»

“One who goes to bed full while he knows that his neighbour is hungry, does not believe in Me” (reported by Al-Bazzar from Anas with a chain considered Hasan by Al-Haythami and Al-Mundhiri).

These verses and narrations, and all the verses related regarding spending, the rules of *Sadaqat* (charities), the rules of *Zakah*, and repeatedly encouraging the support of the poor, the needy, the travellers, and those who ask (beggars), in other words, whoever can be described as poor, all clearly indicate that the economic problem is the poverty of individuals, i.e. the poor distribution of wealth amongst the individuals which results in the poverty of the individuals. Therefore, the problem is the distribution of wealth to every individual subject of the State, and so it is obligatory to address this distribution such that the wealth reaches everyone. The evidences which came regarding this distribution is that it must reach every individual, and in order for it to reach every individual it is necessary to address the one who has been prevented from it, in other words, address the poor, needy, travellers, and those who ask (beggars) – in other words, whoever can be characterised as being poor. These are the evidences for the first half of the article.

As for the second half of the article, its evidence is that Allah (swt) gave a general permission for ownership in every permitted manner of gaining possession, so the Messenger ﷺ said:

«مَنْ أَحَاطَ حَائِطًا عَلَى أَرْضٍ فَهِيَ لَهُ»

“Whoever puts a wall around a land (that doesn’t have an owner) then it is his” reported by Ahmad and Abu Dawud with a chain that Ibn Al- Jarud and Al-Zayn authenticated, and Allah (swt) said:

﴿أَحِلٌ لَكُمْ صَيْدُ الْبَحْرِ﴾

“Lawful to you is game from the sea.” (TMQ 5:96) and so on. Therefore, the permission of ownership and the generality of this permission for every individual subject of the State, whether Muslim or non-Muslim, indicates the facilitation of possession of property, and striving for it, and the evidences regarding the utilisation of food, clothing, shelter, and general enjoyment came in the same manner. Allah (swt) said:

﴿فَكُلُوا مِنْهَا﴾

“So eat of them” (22:28) and the Messenger ﷺ said:

«مَا أَكَلَ أَحَدٌ طَعَامًا قَطُّ خَيْرًا مِنْ أَنْ يَأْكُلْ مِنْ عَمَلٍ يَدِهِ»

“No one eats food better than that which he ate from his own handiwork”, reported by Al-Bukhari through Al-Miqdam, and Allah (swt) said:

﴿كُلُوا مِمَّا رَزَقَنَّا لَكُمُ اللَّهُ﴾

“Eat of what Allah has provided for you.” (TMQ 6:142):

﴿وَكُلُوا مِمَّا رَزَقْنَاكُمُ اللَّهُ حَلَالًا طَيِّبًا﴾ [المائدة ٨٨] وقال تعالى:
 ﴿كُلُوا مِنْ طَيِّبَاتِ مَا رَزَقْنَاكُمْ﴾ [البقرة ١٧٢] وقال تعالى: ﴿قُلْ مَنْ حَرَمَ زِيَّةً
 اللَّهُ أَنْتَ أَخْرَجَ لِعِبَادِهِ وَالظَّيْبَاتِ مِنَ الرِّزْقِ﴾

“And eat of what Allah has provided for you [which is] lawful and good.” (TMQ 5:88) and: “Eat from the good things which We have provided for you.” (TMQ 2:172) , and: “Say, who has forbidden the adornment of Allah which He has produced for His servants and the good [lawful] things of provision?” (TMQ 7:132) ; this is beside other evidences. All of these came in a general form, and the generality of this permission encompasses the utilisation by every individual subject whether Muslim or *Dhimmī*; and all of this mean that the *Shari’ah* facilitated possession and utilisation of wealth for every individual subject of the State.

Built upon this, the *Shari’ah* evidences came and clarified the root problem and its treatment. The root problem was clarified as being the poverty of individuals, and the lack of facilitation for every individual to possess and utilise wealth, while at the same time the evidences amply demonstrated the treatment for poverty. The evidences permitted the possession and utilisation of wealth in a general sense, and made this permission the basis in economic issues. This is the root problem, or by an alternative expression, the root problem is the distribution of wealth, and not its production, since it is the poverty of individuals and the lack of facilitation for them to possess and utilise the wealth, and not the poverty of the country and its need of wealth. Therefore, the problem is one of distribution and not production.

The proof that the root problem is distribution and not production is the *Shari'ah* evidences which came regarding the treatment of poverty, permitting ownership, and utilising the possessions, and in the same manner, the reality of economic life. As for with respect to the *Shari'ah* evidences, there are evidences which came to treat the poverty of individuals, permit ownership and utilisation; in other words, evidences which came regarding distribution. And there are evidences which came regarding the treatment of the poverty of the country, in other words, regarding production. By close investigation of the evidences for the two matters, it becomes clear that the evidences regarding the poverty of individuals, and the permission of ownership and utilisation, are many in number to the point that they attract increased attention, which indicates heightened importance, and that they came to treat a root issue and not a branch.

The verses and narrations related to poverty, in other words, to the poor distribution and its rectification, are abundant in number, and the evidences which came regarding the permission of ownership and utilisation of wealth are likewise abundant. This is from one angle, and from another angle the issue that they are treating, which is the possession of wealth, is a root issue in economics to the point that there is nothing more fundamental, and all economic problems stem from it, which means that it is the root problem. Accordingly, the root problem is distribution. In other words, the reality that the evidences regarding poverty, permission of ownership and the utilisation of it are abundant, and the reality that they treat the fundamental issue from which all economic problems stem, is evidence that the root problem in economics is distribution.

This is different to the evidences regarding the poverty of the country, or by an alternative expression, the evidences regarding production. These are limited in number, and came to

treat what is necessary for production, and not production itself, while that which addresses production directly is barely mentioned. *Shari'ah* evidences came which necessitate the creation of wealth in the country, in other words, necessitate the treatment of production; so the words of Allah (swt):

﴿وَأَعِدُّوا لَهُم مَا أَسْتَطَعْنَا مِنْ قُوَّةٍ﴾

"And prepare against them whatever you are able of power. " (TMQ 8:60) necessitates the presence of wealth in the country and obligates the work to bring it about. Spreading security for the subjects of the State, and carrying out their interests and what that necessitates that in terms of building roads, providing water systems, building schools and mosques, providing medical services and education, dealing with emergencies such as earthquakes and floods, undertaking whatever is necessitated by burdens of the subjects; all of this and anything similar necessitates the presence of wealth and the effort to produce it.

In the same manner, treating the poverty of individuals, which is the root problem, cannot occur without the presence of wealth, so it necessitates working to produce it. Therefore, these rules address what necessitates production, and not production itself. However, they indicate the obligation of production from the angle that "That, without which the obligation cannot be accomplished, is itself an obligation".

As for the rules which directly encourage the production of wealth, although they exist they are few in number; Allah (swt) said:

﴿فَإِذَا قُضِيَتِ الصَّلَاةُ فَانشِرُوا فِي الْأَرْضِ وَابْتَغُوا مِنْ فَضْلِ اللَّهِ﴾
 [الجمعة ١٠] وَقَالَ تَعَالَى: ﴿فَامْشُوا فِي مَنَاسِكِهَا وَكُلُوا مِنْ رِزْقِهِ﴾

“And when the prayer has been concluded, disperse within the land and seek from the bounty of Allah.” (TMQ 62:10), and He (swt) said: “So walk among its slopes and eat of His provision.” (TMQ 67:15), and the Prophet ﷺ said:

«مَا أَكَلَ أَحَدٌ طَعَاماً قُطُّ خَيْرًا مِنْ أَنْ يَأْكُلَ مِنْ عَمَلِ يَدِهِ»

“No one eats food better than that which he ate by working with one's own hands.” (reported by Al-Bukhari through Al-Miqdam). The Prophet ﷺ also said:

«مَنْ طَلَبَ الدُّنْيَا حَلَالاً، اسْتَعْفَافاً عَنِ الْمَسَالَةِ، وَسَعْيًا عَلَى أَهْلِهِ، وَتَعْطُشُّاً عَلَى حَارِهِ، جَاءَ يَوْمَ الْقِيَامَةِ وَجْهُهُ كَالْقَمَرِ لَيْلَةَ الْبَدْرِ»

“Whoever seeks lawful sustenance in life, and asks not others for money, to provide for his family, and his neighbour in sympathy, comes (on the day of judgement) with a face like the moon when full.” (reported by Al-Bayhaqi in Al-Shu'ab Al-Iman from Makhul as a Mursal narration). And he ﷺ said:

«طَلَبُ الْحَالَلِ وَاجِبٌ عَلَى كُلِّ مُسْلِمٍ»

“Seeking lawful livelihood (Halal) is duty upon every Muslim” (reported by Al-Tabarani in Al-Awsat from Anas, with a chain considered Hasan by Al-Haythami and Al-Mundhiri). These evidences are explicit in encouraging the seeking of provision, in other words, encouragement of production, or by another expression the treatment of the poverty of the country. However, what is also apparent from them is that they address the individual,

and that the encouragement of production is only for the treatment of their individual needs, either to fulfil the need or to increase their property; in other words, the permissibility of utilisation.

This is from one angle. From another angle what these evidences address or what they necessitate is only the work for property, and not work alone. In other words, it is production for the sake of possession and not simply production alone, which indicates that the work produces possession, which points to it being a branch issue and not a root one. It is a branch of possession, and not a root for it. That is why the rules which necessitate production came mentioning possession, and that possession necessitates production, and that the rules which directly address production came mentioning utilisation. So in one verse it made the effort for the sake of food, and made food from effort in the first narration, and expressed effort through the words seeking the world and seeking that which is lawful (*Halal*) in the second and third narrations, so all these rules with their evidences mean possession of wealth. All of this indicates that production is not the root problem, rather it is a problem amongst the economic problems, and in the same manner it indicates that the root problem is ownership, or by an alternative expression possession, and this means that the root problem is distribution.

This is all with respect to the *Shari'ah* evidences, as for with respect to the reality of the economic life, no one denies that every country which suffers from economic unrest is due to suffering from poor distribution, and not due to low production. The socialist system, including communism, only arose as a result of the oppression which the society suffered from the capitalist system, or in other words, a result of poor distribution. The social benefits which the capitalists tried to implement in their system are all connected to the distribution. The socialist solutions only deal with the issue of distribution, and the regions which are called the

third world such as the Islamic countries in these days, are only backward due to the poor distribution, and not due to the poverty of the country. Accordingly, the reality of the root problem in economics is poor distribution and not lack of production. This is something that can be sensed, and every person can sense it, whether Muslim, capitalist or socialist. This is since the world as a whole produces much more than the people require, but the poor distribution is what makes some people obscenely rich, while others are destitute and poor. Even in the countries that suffer from low production the root economic problem is distribution first and then low production. Based upon this, the reality of the economic life indicates that the root problem in the economy is distribution, and not production.

Article 125

It is obligatory to guarantee that all the basic needs are met for everyone, and are completely met on an individual basis, and to guarantee that every individual is facilitated to satisfy the extra needs (non-essential needs) to the highest level possible.

This article has two halves: firstly, guaranteeing that the basic needs are satisfied and secondly, facilitation of the satisfaction of the luxurious needs.

The first half has several evidences for it, since the Legislator (swt) encouraged earning, seeking provision and effort, and made the effort to earn provisions a duty; Allah (swt) said:

﴿فَامْشُوا فِي مَنَابِكُمْ وَلْكُوا مِنْ رِزْقِهِ﴾

“So walk among its slopes and eat of His provision.”
(TMQ 67:15) and:

﴿فَإِذَا قُضِيَتِ الصَّلَاةُ فَاتَّشِرُوا فِي الْأَرْضِ وَابْتَغُوا مِنْ فَضْلِ اللَّهِ﴾

“And when the prayer has been concluded, disperse within the land and seek from the bounty of Allah.” (TMQ 62:10). The Prophet ﷺ said:

«كَفَىٰ بِالْمُرْءِ إِثْمًا أَنْ يُضَيِّعَ مَنْ يَقْوُتُ»

“It is sufficient sin for a man that he neglects him whom he maintains.” (reported by Abu Dawud with an chain that Al-Nawawi authenticated from ‘Abd Allah b. ‘Amru b. Al-‘As). This is the origin in guaranteeing the person’s satisfaction of all their basic needs through his earning. So Allah (swt) made work a duty upon the needy male who is capable in order for him to satisfy his needs. This means that work is compulsory on this capable person and if he does not undertake it he would be punished as is the case with every duty. As for women, and those men who are incapable of work, it is a duty to provide them with maintenance and this is a binding right for them, and the State is bound to provide it. Maintenance of the wife is a duty upon the husband; the Prophet ﷺ said:

«وَلَهُنَّ عَلَيْكُمْ رِزْقُهُنَّ وَكَسْوَهُنَّ بِالْمَعْرُوفِ»

“Upon you is their provision and their clothing according to what is acceptable”. Maintenance for the children is a duty upon their father; Allah (swt) said:

﴿وَعَلَى الْأَبْوَادِ لَهُ رِزْقُهُنَّ وَكَسْوَهُنَّ بِالْمَعْرُوفِ﴾

“Upon the father is the mothers' provision and their clothing according to what is acceptable.” (TMQ 2:233), and the Messenger of Allah ﷺ said to Hind:

«خُذِيْ مَا يَكْفِيْكِ وَوَلَدُكِ بِالْمَعْرُوفِ»

“Take whatever is sufficient for you and your child according to what is acceptable.” after she had complained that Abu Sufyan was a miserly man. Maintenance for the inheritor; Allah (swt) said:

﴿وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ﴾

“An heir shall be chargeable in the same way.” (TMQ 2:233) after His (swt) words:

﴿وَعَلَى الْوَلُودِ لَهُ رِزْقُهُنَّ وَكَسْوَهُنَّ بِالْمَعْرُوفِ﴾

“Upon the father is the mothers' provision and their clothing according to what is acceptable.” (TMQ 2:233), so the *Shari’ah* obligated the maintenance of the female without restriction upon the inheritor, since it did not make seeking an earning a duty upon her, and obligated upon him the maintenance for the incapable males, if they were poor.

In the absence of anyone who was obligated to pay maintenance, or if they were present but unable to pay the maintenance, the *Shari’ah* obligated this maintenance upon the *Bayt Al-Mal*, in other words, upon the State. It is narrated that Abu Hurayrah said: The Messenger of Allah ﷺ said:

«مَنْ تَرَكَ مَالًا فَلَوْرَثَةٌ، وَمَنْ تَرَكَ كَلَّا فِيلَيْتَا»

“If somebody dies (among the Muslims) leaving some property, the property will go to his heirs; and if he leaves orphans (dependents), we will take care of them.” (agreed upon from Abu Hurayrah), and the *kall* is the weak who has no father or son. In another chain of the narration it is mentioned:

«مَنْ تَرَكَ مَالًا فَلَأْهُلِهِ وَمَنْ تَرَكَ ذِيَّنَا أَوْ ضَيْعَانَا فَإِلَيَّ وَعَلَيَّ»

“If anyone leaves property, it goes to his heir and if anyone leaves debt and dependants, let the matter come to me and I shall be responsible,” (reported by Muslim from Jabir), and the *Daya'an* is in other words, the children; it is mentioned in *Al-Muhit* dictionary: “*Al-Diya' is also the children*”. So through these evidences the *Shari'ah* has guaranteed the fulfilment of the basic needs of the poor if they were female, or a male who was not capable of earning or if his earnings were not enough.

The incapable according to the *Shari'ah* is either the one literally unable to work, or the one who is incapable from the view of the law, meaning the one who is unable to find work through which he could gain his earning. Both of these are considered incapable.

Through these evidences the *Shari'ah* guaranteed them the fulfilment of all of their basic needs by maintenance, for the female without restriction, and for those men who are either literally or legally incapable, and this is initially upon the husband and any inheritor, and if they were not found or were incapable then upon the *Bayt Al-Mal*, in other words, the State.

In order for the *Shari'ah* to guarantee that the *Bayt Al-Mal* could carry out this maintenance, special concern is given to specific income, and so the *Bayt Al-Mal* has a section for the *Zakah* for the poor:

﴿ إِنَّمَا الْصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسِكِينِ ﴾ [التوبه ٦٠] إلى أن يقول:
 ﴿ وَآبَنِ الْسَّيِّلِ ﴾

“**Zakah expenditures are only for the poor and for the needy.**” until the words: “**And for the [stranded] traveller.**” (TMQ 9:60). If the Zakah is not sufficient, then the maintenance must be paid from other income to the *Bayt Al-Mal* due to the words of the Prophet ﷺ:

«وَمَنْ تَرَكَ دِيْنًا أَوْ ضَيَّعًا فِي لَيْلَىٰ وَعَلَيَّ»

“**If anyone leaves debt and dependants, let the matter come to me and I shall be responsible**” (reported by Muslim from Jabir), in other words, upon the State, and due to his ﷺ words:

«الإِمَامُ رَاعٍ وَمَسْؤُولٌ عَنْ رِعْيَتِهِ»

“**The Imam (ruler) is a guardian and he is responsible for his subjects**” (reported by Al-Bukhari from Abdullah Bin Umar), and amongst the most important responsibilities to his subjects is to guarantee the fulfilment of their basic needs. Therefore, their maintenance is provided from the income of the *Bayt Al-Mal*, since it is from the State responsibilities to distribute the maintenance to the poor. If the confirmed income of the *Bayt Al-Mal* was not sufficient, taxes would be imposed upon the rich Muslims in accordance with what would be enough to provide this maintenance, and it would be taken from them by force in order to get it to the *Bayt Al-Mal* for the sake of this maintenance, since this is from the reasons that the *Khalifah* can impose taxes. This is because if the Zakah and the confirmed income of the *Bayt Al-Mal* is not sufficient to provide the maintenance, then it becomes a duty upon all of the Muslims; the Messenger ﷺ said:

«وَإِنَّمَا أَهْلُ عَرْصَةٍ أَصْبَحَ فِيهِمْ افْرُوضُ جَائِعٌ فَقَدْ بَرَأْتُ مِنْهُمْ ذِمَّةُ اللَّهِ تَعَالَى»

“Whenever the people of an area wake up with a hungry person amongst them, then Allah’s covenant and protection to them is absolved.” (reported by Ahmad from Ibn Umar and authenticated by Ahmad Shakir), which is a report that implies a request to feed the hungry, and is connected to a blame, and so the request is definite, which therefore indicates that it is obligatory upon them. Therefore, the *Khalifah* can impose taxes upon who is capable of them, and take it from them even by force if necessary, since he is executing a duty.

This is all evidence that the *Shari’ah* obligated guaranteeing the satisfaction of all the basic needs for all the individuals, on an individual basis, and specified the income which guarantees the undertaking of this fulfilment, and guarantees its undertaking and continuation of it.

This is from the angle of guaranteeing the fulfilment for all of the individuals, on an individual basis. As for the angle that the fulfilment is of all the basic needs, the reality of life for the individual is that the basic needs are food, clothing and shelter, and the *Shari’ah* evidences which came guaranteed maintenance, and maintenance is food, clothing and shelter. Above and beyond that there are evidences that indicate that these three (food, clothing, and shelter) are the basic needs, and anything else is surplus and extra.

As for the evidences that maintenance is food, clothing and shelter, Allah (swt) said:

﴿وَعَلَى الْأَوْوُدِ لَهُ رِزْقُهُنَّ وَكَسْوَهُنَّ بِالْمَعْرُوفِ﴾ [البقرة ٢٣٣] ويقول:
 ﴿أَشْكُونُهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجُوهِكُمْ﴾ [الطلاق ٦]، ويقول: ﴿مِنْ أَوْسَطِ مَا
 تُطْعِمُونَ أَهْلِيكُمْ﴾

“Upon the father is the mothers' provision and their clothing according to what is acceptable.” (TMQ 2:233) and said: “Lodge them [in a section] of where you dwell out of your means.” (TMQ 65:6) and said: “From the average of that which you feed your [own] families.” (TMQ 5:89), and so Allah (swt) clarified that food, clothing and shelter is maintenance. The Prophet ﷺ said about women, in other words, wives:

«أَلَا وَحْقُّهُنَّ عَلَيْكُمْ أَنْ تُحِسِّنُوا إِلَيْهِنَّ فِي كَسْوَتِهِنَّ وَطَعَامِهِنَّ»

“And their right over you is that you provide for them and dress them with what is good” (reported and authenticated by Al-Tirmidhi from Amrf b. Al-Ahwas). In another narration he ﷺ said:

«وَلَهُنَّ عَلَيْكُمْ رِزْقُهُنَّ وَكَسْوَهُنَّ بِالْمَعْرُوفِ»

“And their right over you is to provide for them and cloth them with what is acceptable.” (reported by Muslim from Jabir). These are evidences that the maintenance is food, clothing and shelter, and that these are the basic needs. Uthman bin 'Affan narrated that the Prophet (s.a.w) said: "There is no right for the son of Adam in other than these things: A house which he lives in, a garment which covers his nakedness, and Jilf (a piece of bread) and water." (Hasan)

As for the evidences that food, clothing and shelter are the basic needs and anything else is extra, it is narrated from the Prophet ﷺ that he said:

«كُلُّ شَيْءٍ سَوَى ظِلَّ بَيْتٍ، وَجَلْفِ الْحُبْرِ، وَثُوبٍ يُوَارِي عَورَتَهُ، وَالْمَاءِ، فَمَا فَضَلَّ عَنْ هَذَا فَلَيْسَ لَابْنِ آدَمَ فِيهِ حَقٌّ»

“There is no right for the son Adam in other than these things: a house to live in, a piece of bread, a garment which covers his nakedness (‘Awrah), and water.” And it is narrated with a different wording:

«لَيْسَ لَابْنِ آدَمَ حَقٌّ فِي سَوَى هَذِهِ الْخَصَائِصِ: بَيْتٌ يَسْكُنُهُ، وَثُوبٌ يُوَارِي عَورَتَهُ، وَجَلْفُ الْحُبْرِ وَالْمَاءِ»

“The son of Adam has no right to anything except these: a house to live in, a clothing to cover his ‘Awrah (parts of body that must be covered in public), a chunk of bread, and water.” (reported by Al-Tirmidhi who said it is Hasan Sahih). The wording of the two narrations indicates that what has been mentioned in these narrations, which was food, clothing and shelter: “shade of a house”; “a house to live in”; “a piece of clothing to cover his ‘Awrah”; “a chunk of bread and water” is enough and sufficient. And his ﷺ words in the narration:

«فَمَا فَضَلَّ عَنْ هَذَا فَلَيْسَ لَابْنِ آدَمَ فِيهِ حَقٌّ»

“and the son of Adam has no right in anything surplus to that” is absolutely clear that these three are the basic needs. Therefore, these two narrations relate that the basic needs are food, clothing and shelter, and anything extra is not basic. By fulfilling these three, the basic needs of individuals would have been satisfied.

As for the evidence that this satisfaction must be complete satisfaction, this is what was related in the evidences when it mentioned that this fulfilment must be reasonable (*Bilma’ruf*), and

be of a sufficient amount, since Allah (swt) said: “*on a reasonable basis (Bilma'ruf)*” in His (swt) words:

﴿وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكَسْوَهُنَّ بِالْمَعْرُوفِ﴾

“Upon the father is the mothers' provision and their clothing according to what is acceptable.” (TMQ 2:233), and the Messenger ﷺ said: “*reasonable (Bilma'ruf)*” in his words:

«وَلَهُنَّ عَلَيْكُمْ رِزْقُهُنَّ وَكَسْوَهُنَّ بِالْمَعْرُوفِ»

“*And their right over you is to provide for them and cloth them with what is acceptable*”. And the meaning of what is reasonable (*Bilma'ruf*), is in other words, what is acceptable or reasonable between people. And he ﷺ said: “*whatever is sufficient*” in his words to Hind:

«خُذِي مَا يَكْفِيكَ وَوَلَدُكَ بِالْمَعْرُوفِ»

“*Take whatever is sufficient for you and your child that is acceptable (Bilma'ruf)*” (agreed upon from the narration of Aisha(ra)), and so it mentions that it should be a sufficient amount. This indicates that the satisfaction should be complete, or in other words, all of the basic needs should be satisfied according to what is reasonable amongst the people. So sufficiency is a condition, in other words, until they are satisfied by food, covered in clothes, and have accommodation. Along with sufficiency, it is a condition that this sufficiency is met by what is reasonable, in other words, not simply sufficient by the lowest criteria, but rather sufficient by what is reasonable in that country which they live, and the people that they live amongst. Accordingly it is confirmed that the satisfaction must be complete, and all of this is the evidence for the first half of the article.

Additionally, the *Shari'ah* evidences did not obligate meeting the basic needs of the individual person by person alone; rather they also obligated fulfilling the basic needs of the *Ummah* by ensuring security, medical care and education for the citizens.

Security is one of the primary obligations of the State, since it spreads security and safety for its citizens, to the point that the State loses its entity if it is not able to provide it. Accordingly it is a condition in *Dar Al-Islam* that the Islamic State is capable of preserving its security with its own powers, and this is why when the Messenger of Allah ﷺ informed the Muslims about the abode of their emigration, the first thing he mentioned was security. He ﷺ said to his companions in Makkah according to what Ibn Ishaq reported in his *Sirah*:

«إِنَّ اللَّهَ عَزَّ وَجَلَّ جَعَلَ لَكُمْ إِخْرَاجَنَا وَدَارَأَ تَامُونَ بِهَا»

“*Allah made fellow brothers for you and a settlement that you feel safe in*”, and similarly when the Ansar met the Messenger of Allah ﷺ and his companion Abu Bakr (ra), the first thing they said to them as reported by Ahmad with an authentic chain from Anas:

«فَاسْتَقْبَلُوهُمَا زُهْدًا حَمْسِمَائةً مِنَ الْأَنْصَارِ حَتَّى انْتَهَوْا إِلَيْهِمَا. فَقَالَتِ الْأَنْصَارُ: انْطَلِقَا آمِينٍ مُطَاعِينٍ»

“*They were received by about five hundreds of Ansar who said: Set off, safe and obeyed*”, and so the spreading of safety for the citizens is from the essential duties of the State.

Health and medical care are from the obligations of the State such that they must be readily available for the citizens, from the angle of clinics and hospitals, and public utilities used for treatment by the Muslims. So, medical treatment from this angle is

part of the interests and public utilities. The interests and public utilities must be undertaken by the State since they are from the issues that the State is responsible over, in accordance with the words of the Messenger ﷺ:

«الإِمَامُ رَاعٍ وَهُوَ وَمَسْؤُولٌ عَنْ رَعِيَّتِهِ»

“The Imam (ruler) is a guardian, and responsible (and will be questioned) for his subjects.” (reported by Al-Bukhari from Abdullah Bin Umar). This text is general regarding the responsibility of the State for health and medical care since they are part of the obligatory responsibilities of the State.

There are evidences specific to health and medical care: Muslim reported from Jabir who said:

«بَعَثَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِلَى أُبَيِّ بْنِ كَعْبٍ طَبِيبًا فَقَطَعَ مِنْهُ عِرْقًا ثُمَّ كَوَاهُ عَلَيْهِ»

“Allah's Messenger (may peace be upon him) sent a physician to Ubay b. Ka'b. He cut the vein and then cauterised it”. And Al-Hakim narrated in Al-Mustadrak from Zayd b. Aslam from his father who said:

«مَرِضْتُ فِي زَمَانِ عُمَرَ بْنِ الْخَطَّابِ مَرَضًا شَدِيدًا فَدَعَاهُ لِي عُمَرُ طَبِيبًا فَحَمَانِي حَتَّى كُنْتُ أَمْصُ النَّوَافَةَ مِنْ شِدَّةِ الْحِمَيَّةِ»

“I fell severely sick at the time of Umar b. Al-Khattab who called a physician for me, he warmed me up to the extent I would suck on date pits due to the intense heat”.

In his capacity as a ruler, the Messenger ﷺ sent a doctor to Ubay, and Umar (ra), the second righteous Khalifah, called a doctor for Aslam to treat him, which are two evidences that health and medical care are from the essential needs of the citizens that

the State must make sure are readily available for whoever needs them.

As for the evidence of education (being a basic need), the Messenger of Allah ﷺ made ransom of the disbelieving prisoners that they should teach ten of the Muslim children. Ransom is part of the war booty, which is the property of the Muslims, and the consensus of the companions on setting aside a specific amount from the treasury (*Bayt Al-Mal*) as salary for teachers.

Accordingly, it is obligatory upon the State to provide security, medical care and education for all of the citizens, and to make that part of the treasury issues, without any difference made between the Muslims and *Dhimmi*, or rich and poor.

The importance of the essential needs for the individual and *Ummah* is explained by the Messenger of Allah ﷺ in that the provision of these needs is like possessing the world in its entirety, an allusion expressing the importance of these needs. Al-Tirmidhi reported from Salamah b. ‘Ubayd Allah b. Mihsan Al-Ansari from his father, who was a companion, said: The Messenger of Allah ﷺ said:

«مَنْ أَصْبَحَ مِنْكُمْ آمِنًا فِي سُرْبِيهِ، مُعَافًى فِي جَسَدِهِ، عِنْدُهُ قُوتُ يَوْمِهِ، فَكَانَ لَهُ الدُّنْيَا حِيزَتُ لَهُ الدُّنْيَا»

“Whoever begins his day feeling family security and good health; and possessing provision for his day is as though he possessed the world” (Abu ‘Isa said this narration is *Hasan Gharib*). And similarly Ibn Maja reported it with a *Hasan* chain, and Abu Nu‘aym has a similar report in *Al-Hilyah* from Abu ’l Darda’, but with the extra part ‘all of it’, in other words:

«جِيزَتُ لَهُ الدُّنْيَا بِحَدَّ افِيرِهَا»

“as though he possessed the whole world”.

These evidences all indicate the obligation of guaranteeing the fulfilment of all the basic needs for all of the citizens individually, in terms of food, clothing and shelter, and in the same manner indicates the necessity of the wide provision of the essential services for the *Ummah* from security, health and education.

As for the second half from the article, facilitating the fulfilment of the luxurious needs (non-essential needs), then the obligation of work upon the capable male is an evidence for the facilitation of the fulfilment of the luxurious needs in the same manner as the basic needs. This is because the encouragement for earning is not restricted to the fulfilment of the basic needs, so this generality is evidence that the *Shari’ah* enables the individual to fulfil their non-essential needs from their earnings. Additionally, the permission to enjoy the good/lawful things is also an evidence for the facilitation of the fulfilment of the luxurious needs:

Allah (swt) says:

﴿كُلُوا مِن طَيْبَاتِ مَا رَزَقْنَاكُمْ﴾ [البقرة ٥٧] وَقَالَ: ﴿فُلْ مَنْ حَرَّمَ زِينَةَ اللَّهِ الَّتِي أَخْرَجَ لِعِبَادِهِ وَالطَّيْبَاتِ مِنْ أَرْزَقِ﴾ [الأعراف ٣٢]، وَقَالَ: ﴿وَلَا سَخْسَبَنَ الَّذِينَ يَبْخَلُونَ بِمَا أَتَاهُمُ اللَّهُ مِنْ فَضْلِهِ هُوَ خَيْرًا لَهُمْ بَلْ هُوَ شَرٌّ لَهُمْ سَيِّطُوْقُونَ مَا بَخَلُوا بِهِ يَوْمَ الْقِيَمَةِ﴾ [آل عمران ١٨٠]، وَقَالَ: ﴿يَتَأْمِلُهُمَا الَّذِينَ ءامَنُوا لَا تُخَرِّمُوا طَيْبَاتِ مَا أَحَلَّ اللَّهُ لَكُمْ﴾ [المائدة ٨٧]، وَقَالَ: ﴿لِيُنْفِقُ دُوْسَعَةٍ مِنْ سَعَيْتِهِ﴾ [الطلاق ٧] وَقَالَ: ﴿وَلَا تَنسَكْ تَصِيبَكَ مِنْ أَلْدُنْيَا﴾

“Eat from the good things with which We have provided you.” (TMQ 2:57); **“Say, who has forbidden the adornment of Allah which He has produced for His servants and the good [lawful] things of provision?”** (TMQ 7:32); **“And let not those who [greedily] withhold what Allah has given them of His bounty ever think that it is better for them. Rather, it is worse for them. Their necks will be encircled by what they withheld on the Day of Resurrection.”** (TMQ 3:180); **“O you who have believed, do not prohibit the good things which Allah has made lawful to you.”** (TMQ 5:87); : **“Let a man of wealth spend from his wealth.”** (TMQ 65:7); **“And [yet], do not forget your share of worldly affairs.”** (TMQ 28:77).

All of this is evidence that the *Shari’ah* permitted every individual to fulfil his non-essential needs, so by this permission it enabled him to satisfy himself. On top of that is what has been related to the prohibition of miserliness, and rebuke of whoever prohibits the enjoyment of lawful things, which clearly indicates this enablement.

Article 126

The wealth belongs to Allah (swt) alone, and He (swt) has made human beings the trustees of it. Through this general trust they have been given the right to ownership of wealth.

Allah (swt) has permitted for the individual to possess the wealth; so through this specific permission, he managed to possess it practically.

The evidences for this article are His (swt) words:

﴿وَأَتُوهُم مِّنْ مَالِ اللَّهِ الْأَكْبَرِ إِذَا نَكِّمْ﴾

“And give them from the wealth of Allah which He has given you.” (TMQ 24:33); so the wealth is ascribed to Allah (swt). And His (swt) words:

﴿وَيُمْدِدُكُمْ بِأَمْوَالٍ وَبَنِينَ﴾

“And give you increase in wealth and children.” (TMQ 71:12); so the increase in the wealth for people is ascribed to Allah (swt). Also, His (swt) words:

﴿وَأَنفِقُوا مِمَّا جَعَلَكُمْ مُسْتَحْلِفِينَ فِيهِ﴾

“And spend out of that in which He has made you successors.” (TMQ 57:7), and so accordingly He (swt) made man the trustees of Allah (swt) in the wealth, as it was Allah (swt) who made them the inheritors, so the wealth in origin belongs to Allah (swt). Therefore, the ownership of the wealth is with Allah (swt), but He (swt) has made the people the trustees of it, which has given them the right to its ownership. For this reason the verse regarding the entrustment is not an evidence for private ownership, but rather it is evidence that the human being from the aspect of being human, has the right of ownership of wealth.

As for practical private ownership, or in other words, the fact that it is permitted for him to actually possess wealth, this comes from another evidence, which is the cause which permitted the individual to practically come into possession. For example his ﷺ words:

«مَنْ أَحَاطَ حَائِطًا عَلَى أَرْضٍ فَهُوَ لَهُ»

“If anyone surrounds a land with a wall, it belongs to him.” (reported by Ahmad and Abu Dawud with a chain authenticated by Al-Jarwad and Al-Zayn), and his ﷺ words:

«مَنْ أَحْيَا أَرْضًا مَيِّتَةً فَهُوَ لَهُ»

“*whoever revives dead land, then it is his*” reported by Al-Bukhari for Umar as a *Ta’liq* (title heading without chain mentioned) and also reported by Ahmad and Al-Tirmidhi with an authentic chain from Jabir, and the words of Allah (swt):

﴿لِلرَّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ
الْوَالِدَانِ وَالْأَقْرَبُونَ﴾ [النساء ٧] ومن مثل قوله تعالى: ﴿أُحِلَّ لَكُمْ صَيْدُ الْبَحْرِ﴾

“**For men is a share of what the parents and close relatives leave, and for women is a share of what the parents and close relatives leave.**” (TMQ 4:7) and: “**Lawful to you is game from the sea.**” (TMQ 5:96), amongst other texts.

Accordingly, the right of ownership of whatever Allah (swt) created is confirmed for every human, and practical ownership requires permission from the Legislator (swt) regarding how it can be achieved and which wealth can be sought. In other words, evidence from the *Shari’ah* is required which permits this possession to practically take place. Therefore, the article comprises of three elements.

Firstly, that ownership is for Allah (swt):

﴿وَإِذَا تُؤْهَمُ مِنْ مَالِ اللَّهِ﴾

“**And give them from the wealth of Allah which He has given you.**” (TMQ 71:12).

Secondly, that the person has the right to own wealth, the evidence being the verse regarding entrustment/succession:

﴿وَأَنفَقُوا مِمَّا جَعَلَكُمْ مُسْتَحْلِفِينَ فِيهِ﴾

“And spend out of that in which He has made you successors.”
(TMQ 57:7).

Thirdly, that the practical taking of ownership of the wealth by the individual requires permission from the Legislator (swt) - in other words, evidence which permits the ownership of it in practical terms, and the evidence for this are the texts regarding the permission of practically taking ownership.

Accordingly the evidences for this article have been made clear.

Article 127

There are three types of property – private, public and State.

The evidence for each type of property has been deduced from the Quran and *Sunnah*, and through close examination of all of the types of property deduced from the *Shari'ah* evidences. Investigation of the *Shari'ah* evidences regarding property along with the definition of every type of property deduced from a *Shari'ah* evidence, indicates that the type of ownership is confined to the three mentioned in this article.

Article 128

Private property is *Shari'ah* rule determined by the property itself or the benefit from it. This qualifies the one that owns a property to benefit of it or gets an exchange for it.

The evidence of this article is the *Shari'ah* evidences which indicate that the definition of private ownership is the permission of the Legislator (swt) for the utilisation of the property itself, which encompasses His (swt) permission with respect to utilisation, which in turn requires an evidence for every utilisation since it is the action of the worshipper, and so it is imperative that there is an address from the Legislator (swt) regarding it. In the same way it also encompasses His (swt) permission with respect to whether the property itself can be utilised or not, which does not require an evidence for every item. Rather, the origin in every property is that it has been permitted to be owned due to the general evidence in His (swt) words:

﴿وَسَخَّرَ لِكُمْ مَا فِي السَّمَاوَاتِ وَمَا فِي الْأَرْضِ جَمِيعًا﴾

“And He has subjected to you whatever is in the heavens and whatever is on the earth - all from Him.” (TMQ 45:13), and so the prohibition of owning a specific property requires a text.

Accordingly the evidences for the permission of utilisation permitted the possession of the property, and the evidences which permitted every thing for human beings gave him the general permission to own anything, and so it has been deduced from these two issues that the definition of ownership is the permission of the Legislator (swt) for the utilisation of the property itself. This is the meaning of the definition mentioned in this article.

If we take the example of the ownership of a loaf of bread, it would be said that the loaf of bread is the property, and it is determined that the *Shari'ah* rule regarding it is that the Legislator (swt) gave permission for people to utilise it, through consumption, benefiting from it and exchanging it. This permission for utilisation necessitates that the owner, who is the one whom the permission

relates to, is enabled to eat the loaf of bread and similarly is enabled sell it. So the determined *Shari'ah* rule for the property, in other words, the loaf of bread, is that there is permission to consume and exchange it.

The definition mentioned in this article was based upon this, and this definition means the permission of the Legislator for the utilisation of the property. The article was drafted upon this basis.

Article 129

Public property is the permission of the Legislator (swt) for the community to collectively utilise the property itself.

The evidence for this article is that the *Shari'ah* evidences indicate that the definition of public property is the permission of the Legislator (swt) for the community to collectively utilise the property, and the evidences for this definition are the texts related regarding public property. The words of the Messenger ﷺ:

«الْمُسْلِمُونَ شُرَكَاءٌ فِي ثَلَاثٍ: الْمَاءِ وَالْكَلَإِ وَالنَّارِ»

“Muslims have common share in three (things).water, grass, and fire.” reported by Ahmad from a man from the companions of the Prophet ﷺ, and his narrators are trustworthy, and what Al-Tirmidhi narrated from Abyad b. Hammal:

«أَنَّهُ وَفَدَ إِلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَاسْتَقْطَعَهُ الْمَلْحُ، فَقَطَّعَ لَهُ فَلَمَّا أَنَّ وَلَيْ قَالَ رَجُلٌ مِّنَ الْمَجْلِسِ: أَتَدْرِي مَا قَطَّعْتَ لَهُ؟ إِنَّمَا قَطَّعْتُ لَهُ الْمَاءَ الْعَدْ. قَالَ فَانْتَزَعَهُ مِنْهُ»

“Went to the Messenger of Allah ﷺ and asked him for assigning him (the mines of) salt as fief. So he assigned it to him

as a fief. When he returned, a man in the meeting asked: Do you know what you have assigned him as a fief? You have assigned him the perennial spring water. So he took it back from him". The countless water is that which does not deplete, in other words, if you extracted a mineral from it, it does not deplete. And he ﷺ said:

«مَنْيَ مُنَاخٌ مِّنْ سَبَقَ»

"*Mina is a resting place for whoever gets their first*", reported by Al-Tirmidhi from Aisha(ra) and he said it is *Hasan Sahih*, and Mina is the famous location in the *Hijaz* which the pilgrims descend to after standing at Arafat, and all the people can rest their camels there if they arrive there before others. And the Prophet ﷺ affirmed that people participate in the use of general roads. The definition of public property was derived from all of this, since these texts indicate that the Legislator (swt) gave permission to people to participate collectively in these things and hence it was deduced. On this basis the article was drafted.

Article 130

State property is every wealth whose expenditure is determined by the opinion and *Ijtihad* of the *Khalifah*, such as the wealth derived from taxes, land tax and *Jizya*.

Its evidence is that the *Shari'ah* evidences indicated that the definition of State property is the permission of the Legislator (swt) for the *Khalifah* to spend the wealth according to his opinion and *Ijtihad*. The Messenger ﷺ used to spend the wealth from the war booty according to his opinion and *Ijtihad*, and likewise the wealth from the *Jizya* and land taxes which were collected from the

different lands. There is a *Shari'ah* text which shows that it was left to the Messenger ﷺ to spend it according to how he ﷺ saw fit, which is an evidence that the *Imam* can spend this wealth according to his opinion and *Ijtihad*, since the action of the Messenger ﷺ is a *Shari'ah* evidence and so it is a permission for the *Imam* to spend this wealth as he sees fit according to his opinion and *Ijtihad*. Therefore, that is the definition of State property.

For this reason, the expenditure of the *Zakah* has not been left to the *Khalifah* to decide according to his opinion and *Ijtihad*, rather the categories it can be spent upon have been specified and the State is the guardian over spending it in those areas, and so the *Khalifah* cannot increase the categories according to his opinion and *Ijtihad*.

Based upon this, if there is a *Shari'ah* text reported that permits the *Imam* to spend specific wealth according to his opinion and *Ijtihad*, then that wealth is considered to be the State's wealth, and the text of the Legislator (swt) is a permission for the *Imam* to spend it according to his opinion and *Ijtihad*. Accordingly, the wealth of war booty, land taxes, *Jizya* and anything similar from taxes, and the returns from the State properties, is all State wealth. The definition which was deduced from the actions of the Messenger ﷺ, and the generality of the texts which came ordering the utilisation of this wealth, apply upon all of the aforementioned issues. This article was drafted upon this basis.

This is the definition for every category of property, and these are the evidences that each of these definitions was deduced from. By examining these definitions which were drafted regarding ownership, and the evidences which they were deduced from, it becomes clear that property falls under one of the following three categories: private property, public property and State property. As for the wealth from *Zakah*, this is not possessed by any specific

person, rather it is possessed by specific sections, and so it is considered to be from the category of private property, since the Legislator (swt) permitted those sections to possess it through the conveyance of the one giving it, irrespective of whether that was the one giving the *Zakah* directly or the *Imam*, and for that reason it is not considered to be a fourth category of property. Accordingly, property is categorised according to these three categories, and the details of the *Shari'ah* evidence for article 127 have been made clear.

Article 131

Private property consisting of liquid and fixed assets is restricted to the following five *Shari'ah* means:

- a. Work**
- b. Inheritance**
- c. The need of wealth for the sake of living**
- d. Donation from the wealth of the State to its subjects**
- e. Funds taken by individuals without any effort or purchase**

There must exist means through which the Legislator (swt) permits ownership, so if the *Shari'ah* cause is present, then the ownership of the wealth is present. If on the other hand the *Shari'ah* means is not present then there is no ownership of the wealth even if it is practically possessed, since ownership is the possession of the wealth through a *Shari'ah* means through which the Legislator (swt) permitted its possession. The Legislator (swt) restricted the means of possession to specific circumstances,

limited them to a specific number, and did not leave them unrestricted, and made them clear expansive lines under which are a number of parts which are its branches and issues from its rules. They were not given a specific comprehensive *Illah* (*Shari'ah* reason) and so other comprehensive issues are not made analogous to them. That is because new needs only occur in the present wealth, and not in the transactions; in other words, not in the system of relations but rather in its subjects. Therefore, it is necessary to limit the transaction to specific circumstances, which apply to new and numerous needs, and upon the wealth from the angle that it is wealth, and upon the effort from the angle that it is effort. And in the restriction of private wealth in a manner that agrees with the nature (*Fitrah*), and organising the ownership such that the society is protected from the mistakes that result from it if left unrestricted.

This article explains the *Shari'ah* means for ownership, in other words, the situations which the Legislator (swt) permitted the utilisation of the property. It is imperative that the practical means of ownership are known and not the means of increasing the property. The Legislator (swt) clarified the means of ownership, in other words, the means for the ownership of the original wealth, which means the means which brings about the ownership of wealth for the individual after he did not own it originally. And the Legislator (swt) clarified the means of increasing the wealth, in other words, the means for increasing the wealth which he owned. The *Shari'ah* came with rules connected to both ownership and increasing ownership. The trade and rent contracts are from the rules which are related to increasing the wealth, in other words, increasing ownership. Working in hunting, and partnerships, are from the rules connected to ownership, in other words, with possession of the origin of the wealth. This article is concerned

with the means for ownership and not those of increasing the ownership.

The evidence for this article is the investigation of the evidences which explained the permission of the Legislator (swt) for the utilisation of the product, in other words, investigation of the evidences regarding practically taking possession. With investigation, it becomes clear that the primary means for possession are five and all the means of possession fall under one of these five.

As for the evidences for these five means: the first means (A) is work, and its evidences are the evidences of the circumstances that an individual gains wealth through effort, in other words, creation of wealth from the angle that it is done through work, which are seven circumstances:

First: Reviving dead land, its evidence being the words of the Prophet ﷺ:

«مَنْ أَحْيَا أَرْضًا مَيِّتَةً فَهُوَ لَهُ»

“whoever revives dead land, then it belongs to him” reported by Ahmad and Al-Tirmidhi with an authentic chain and also by Al-Bukhari from Umar, and his ﷺ words:

«مَنْ عَمَرَ أَرْضًا لَيْسَتْ لَأَحَدٍ فَهُوَ أَحَقُّ»

“He who cultivates land that does not belong to anybody is more rightful (to own it).” reported by Al-Bukhari from Aisha(ra). And his ﷺ words:

«مَنْ أَحَاطَ حَائِطًا عَلَى أَرْضٍ فَهُوَ لَهُ»

“whoever surrounds a land with a wall, it belongs to him.” reported by Ahmad and Abu Dawud with a chain authenticated by

Ibn Al-Jarwad and Al-Zayn. Dead land is the land where there are no signs that anyone holds its possession and so there is nothing in terms of fencing, agriculture, building or anything similar. Reviving it is through anything which indicates inhabitation, such as agriculture, planting trees, building and so on. Similar to revival is to place something which indicates that someone has taken possession of it, such as planting hedges or fencing or pillars and so on.

And so any individual citizen who revives a dead land takes possession of it according to the rules of the *Shari'ah*, irrespective of whether they were a Muslim or a *Dhimmi*: because the texts are general, encompassing all the individual citizens.

Second: Hunting, its evidence being the words of Allah (swt):

﴿وَإِذَا حَلَّتُمْ فَاقْطَلُوهُا﴾ [المائدة ٢] وقوله تعالى: ﴿أَحِلٌ لَكُمْ صَيْدٌ﴾
البخاري

“But when you come out of Ihram, then [you may] hunt.” (TMQ 5:2), and His (swt) words: “Lawful to you is game from the sea.” (TMQ 5:96).

Third: To act as a middle-man or commission agent, the evidence being what was narrated from Qays b. Abi Gharza Al-Kanani who said:

«يَا مَعْشَرَ التُّجَارِ، إِنَّ هَذَا الْبَيْعَ يَحْضُرُهُ اللَّغْوُ وَالْحَلْفُ، فَشُوُبُونَهُ بِالصَّدَقَةِ»

“O company of merchants, unprofitable speech and swearing takes place in business dealings, so mix it with Sadaqah (alms)” (reported by Ahmad with an authentic chain).

Fourth: the *Mudarabah* partnership (where one person invests wealth into a partnership, and the other invests effort), its evidence being what was narrated from Al-Abbas Bin Abdul-Muttalib that when he handled money as *Mudarabah*, he used to stipulate on the partner not to travel with it by the sea, nor to descend a valley nor to trade with live things, otherwise he would have to guarantee losses incurred.

«فَبَلَغَ ذَلِكَ رَسُولُ اللَّهِ ﷺ فَاسْتَحْسَنَهُ»

"*When the Prophet of Allah ﷺ became aware of that, he ﷺ approved it*". Even though Al-Hafiz said that: "Al-Bayhaqi reported it with a chain that he found weak", *Mudarabah* (*Al-Qirad*) is confirmed by the consensus of the companions: Ibn Hazm said in *Maratib Al-Ijma'* regarding it after he mentioned that he did not find an evidence for it in the *Sunnah*: "but it is a correct consensus. We are certain that it used to take place at his ﷺ time, and he ﷺ knew about it and confirmed it, and if it was not for that it would not be permitted", the same as Al-Hafiz reported about Ibn Hazm in *Talkhis Al-Khabir*.

From the evidences of the consensus of the companions:

Malik reported from Zayd Bin Aslam from his father that he said: 'Abd Allah and 'Ubayd Allah, the two sons of Umar (ra) went out with the army to Iraq. They passed by Abu Musa Al-Ash'ari, who was the *Amir* of Basra, and he welcomed them and said: If I was able to help you with any issue, I would. Then he said: Here is some of the wealth from the wealth of Allah (swt) that I want to send to the leader of the believers. I will lend it to you, so buy some of the goods from Iraq, and sell them in Madinah. Give the capital to Umar (ra) and keep the profit for yourselves. They replied: we would like that. So he did that and wrote to Umar (ra) informing him about their taking the wealth. When they returned to Madinah

they sold the goods and made a profit, and so when they gave the original capital amount to Umar (ra), he said: Were all the soldiers given similar to what you were given? They replied in the negative. And so Umar (ra) said: Because you were the sons of the leader of the believers, he gave it to you. Give me the money and its profit. ‘Abd Allah remained silent. As for ‘Ubayd Allah, he said: this is not necessary for you O leader of the believers, if this wealth was reduced or destroyed we would have guaranteed it (in other words, paid the original capital in full). And so Umar (ra) said: Give it to me. Abdullah remained silent and ‘Ubayd Allah repeated what he had said. A man from those sitting around Umar (ra) said: O leader of the believers, if you made it a *Qirad* for him? (in other words, a *Mudarabah* partnership), and so Umar (ra) said: I made it as a *Qirad* (loan) for him. So, Umar (ra) took the original capital, and half of the profit, and his two sons took the other half of the profit. This was reported in *Al-Muwatta* and Al-Hafiz said its chain is authentic and this was done in front of a crowd of the companions.

Similarly the action of *Al-Qirad (Al-Mudarabah)*:

Malik reported from Al-Ala Bin ‘Abd alRahman from his father from his grandfather that ‘Uthman b. ‘Affan (ra) gave him money as *Qirad* to work with it, and the profit to be split between them.

And Al-Bayhaqi reported in *Al-Sunan Al-Kubra*, and Al-Hafiz said that the chain is strong, from Hakim b. Hizam that he used to give money to a man on the basis of *Qirad*, and made it a condition that he wouldn't go to the Wad valley with it, and not buy animals with it, nor transport it overseas, and if he did any of that he would be liable for it. He said: if he overstepped the limits, he would be liable.

Fifth: the *Musaqah* (renting trees for a portion of their yields) partnership, its evidence is what was narrated by ‘Abd Allah b. Umar who said:

«عَامَلَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَهْلَ خَيْرٍ بِشَطْرٍ مَا يَخْرُجُ مِنْ ثَمَرٍ أَوْ زَعْمَرٍ»

“*The Messenger of Allah (saw) contracted the people of Khaibar to work and cultivate in return for half of the fruits or produce.*” (agreed upon).

Sixth: working for someone else for a salary, the evidence being His (swt) words:

﴿فَإِنْ أَرْضَعْنَاهُمْ فَأَتُوهُمْ أُجُورَهُنَّ﴾

“**And if they breastfeed for you, then give them their payment.**” (TMQ 65:6), and what was narrated by Aisha(ra) who said:

«اسْتَأْجَرَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ رَجُلًا مِنْ بَنِي الدَّيْلِ هَادِيًّا خِرْبَاتِهِ وَهُوَ عَلَى دِينِ قَوْمِهِ وَدَفَعَ إِلَيْهِ رَاحِلَتِهِمَا وَوَاعْدَاهُ غَارَ ثُورٍ بَعْدَ ثَلَاثَ لَيَالٍ»

“*The Messenger of Allah hired a man from the tribe of Bani-Ad-Dil as an expert guide who was a pagan (follower of the religion of the pagans of Quraish). The Prophet and Abu Bakr gave him their two riding camels and took a promise from him to bring their riding camels in the morning of the third day to the Cave of Thaur*” (reported by Al-Bukhari).

Seventh: Buried minerals/treasures, and its evidence being the words of the Messenger ﷺ:

«وَفِي الرَّكَازِ الْحُمُسُ»

“One fifth is compulsory to be paid (Al-Zakah) on buried Treasure.” (agreed upon from Abu Hurayrah).

These are the evidences for the seven circumstances which are the evidences for the first means of ownership which is work.

As for the second means (B), inheritance, its evidence is the words of Allah (swt):

يُوصِّيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذِّكْرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ فَإِنْ كُنْ نِسَاءٌ فَوْقَ أَنْثَيَيْنِ فَاهْنَ ثُلَّا مَا تَرَكَ

“Allah instructs you concerning your children: for the male, what is equal to the share of two females. But if there are [only] daughters, two or more, for them is two thirds of one's estate.” (TMQ 4:11) alongside the rest of the texts regarding inheritance from the Quranic verses and the narrations from the *Sunnah*.

The third means (C) is the need for wealth for the sake of living, and its evidence is the evidence for maintenance, from the fact that it is obligatory to be given to the individual if they are unable to earn enough practically, such as the one who is small, or incapable of work, or is legally considered like the one unable to work even though he is capable. So the *Shari'ah* made it obligatory upon those close inheritors to him to provide him with maintenance and if they are unable to then it falls upon the *Bayt Al-Mal*. The indication of that evidence is that he possesses that wealth which he took as maintenance in order to survive.

The fourth means (D) is the State donation of some of its wealth, such as granting some portions of land, or giving wealth in order to repay the debts, or agricultural assistance. The evidence for the granting of land is what was narrated from Bilal Al-Muzni that:

«أَنَّ رَسُولَ اللَّهِ أَفْطَعَهُ الْعِيقَقَ أَجْمَعَ»

“The Messenger ﷺ bestowed the land of Al-Aqiq as fief” reported by Abu ‘Ubayd in *Al-Amwal*, and what was narrated from ‘Amru b. Shu‘ayb who said:

«أَفْطَعَ رَسُولُ اللَّهِ نَاسًا مِنْ مُرْيَةٍ أَوْ جُهَيْنَةً أَرْضًا»

“The Messenger ﷺ bestowed a land to some people from Mozinah or Johainah as fief” reported by Abu Yusuf in *Al-Kharaj*. With respect to the issue of giving money to repay the debts, Allah (swt) gave some of the shares of *Zakah* to indebted people; He (swt) said:

﴿وَالْغَرَمِينَ﴾

“And for those in debt” (TMQ 9:60). The Messenger ﷺ said:

«فَمَنْ تَرَكَ دِيْنًا فَعَلَيْهِ، وَمَنْ تَرَكَ مَالًا فَلِوَرَثَتِهِ»

“whoever left a debt behind then it is upon me, and whoever left property then it is for his heirs” (agreed upon from the narration of Abu Hurayrah), and the meaning of the words of the Messenger ﷺ: “upon me” is that it is upon the State, or in other words, upon the *Bayt Al-Mal*. And as for giving the farmers money for the sake of agriculture, Umar b. Al-Khattab (ra) gave money from the *Bayt Al-Mal* in Iraq to assist the farmers in the cultivation of their land and helped them pay for their requirements without taking anything back from them, and no one rebuked him over that even though it was something that should have been rebuked (if it was not permitted in origin), and so it is an *Ijma’*.

Therefore, these three circumstances: granting land, giving money to repay debts, and giving financial assistance for agriculture, are all causes for ownership. The *Imam* has the right to spend the wealth of the State according to his opinion and *Ijtihad* in any permitted issues and so whoever has the money spent upon them has gained the ownership of the wealth through this donation.

As for the fifth means (E), it encompasses five circumstances:

First: The relationships of individuals with each other, such as giving gifts (*Hadiyah*), donations (*Hibah*), and bequests (*Wasiyyah*). It is narrated from Abu Hamid as-Sa‘adi who said:

«غَزَّوْنَا مَعَ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ غَزْوَةَ تَبُوكَ... وَأَهْدَى مَلِكٌ أَيْلَةً لِلنَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بِغَلَةَ بَيْضَاءَ وَكَسَاهُ بُرْدَاءً»

“We accompanied the Prophet ﷺ in the Ghazwa of Tabuk and the king of ‘Aila presented a white mule and a cloak as a gift to the Prophet.” (reported by Al-Bukhari). This is evidence for the permission of gifts. And the Prophet ﷺ said:

«تَهَادُوا تَحَابُوا»

“**Give gifts to each other, love each other**”, reported by Al-Bukhari in *Al-Adab Al-Mufrad* from Abu Hurayrah, and also reported by Al-Bayhaqi, which indicates the permissibility of gifts, and he ﷺ said:

«لَا يَرْجِعُ أَحَدُكُمْ فِي هِبَتِهِ إِلَّا الْوَالِدُ مِنْ وَلَدِهِ»

“**No one should take back their gift, except what the father gave to his son**” reported by Ibn Maja from Amrf Bin Shu’ain from his father from his grandfather, and he ﷺ said:

«الْعَائِدُ فِي هِبَّتِهِ كَالْعَائِدِ فِي قَيْءِهِ»

“One who takes back his donation (hibah) is like the one who takes back his vomit” agreed upon from Ibn ‘Abbas, which indicates the permissibility of donations. And he ﷺ said to Sa’ad Bin Malik:

«أَوْصَى بِالثُّلُثِ، وَالثُّلُثُ كَثِيرٌ»

“Will a third, and a third is too great” (agreed upon from Sa’d). This is the evidence for the permissibility of leaving behind a will.

Second: being entitled to wealth as a recompense for harm, such as the compensation for killing someone and the compensation for injury; Allah (swt) said:

﴿وَمَنْ قَتَلَ مُؤْمِنًا حَطَّةً فَتَحْرِيرُ رَقْبَةٍ مُؤْمِنَةٍ وَدِيَةٌ مُسَلَّمَةٌ إِلَى أَهْلِهِ﴾

“And whoever kills a believer by mistake - then the freeing of a believing slave and a compensation payment presented to the deceased's family [is required].” (TMQ 4:92), and the Prophet ﷺ said:

«فِي السِّنِّ خَمْسٌ مِنَ الْإِلَيْلِ»

“Five camels for a tooth” (reported by Al-Bayhaqi and authenticated by Ibn Hibban and Al-Hakim), and he ﷺ said:

«فِي دِيَةِ الْأَصَابِعِ الْيَدَيْنِ وَالرِّجْلَيْنِ سَوَاءٌ عَشْرُ مِنَ الْإِلَيْلِ لِكُلِّ أَصْبَعٍ»

“The blood-money (Diyah) for the fingers on the hands and (the toes of) the feet is the same: Ten camels for each finger.” (reported by Al-Tirmidhi from Ibn ‘Abbas, and he said that the narration is *Hasan Sahih*). Al-Bayhaqi reported something similar in the book of Abu Bakr Bin Muhammad. Therefore, the bereaved

family receive the compensation for the one killed and the injured person received the compensation for the limb lost.

Third: being entitled to *Mahr* (dowry) and its dependencies; Allah (swt) said:

﴿وَمَا تُؤْتُوا لِلنِّسَاءَ صَدْقَتِهِنَّ بِخَلَةٍ﴾

“And give the women [upon marriage] their [bridal] gifts graciously.” (TMQ 4:4), and so she possesses her dowry simply through the marriage contract.

Fourth: that which is found. The Messenger ﷺ was asked about anything which was found and he said:

«مَا كَانَ مِنْهَا فِي طَرِيقِ الْمِيَاتِ أَوِ الْقَرِيرِ الْجَامِعِ فَعَرَفَهَا سَنَةً فَإِنْ جَاءَ طَالِبُهَا فَأَدْفَعْهَا إِلَيْهِ وَإِنْ لَمْ يَأْتِ فَهِيَ لَكَ»

“If it is in a frequented (Maytah) road and a large town, make the matter known for a year, and if its owner comes, give it to him, but if he doesn’t, it belongs to you.” (reported by Abu Dawud from ‘Abd Allah b. ‘Amr b. ‘Al-As). ‘Iyad Bin Himar said: the Messenger of Allah ﷺ said:

«مَنْ وَجَدَ لُقْطَةً فَلْيُسْهِدْ ذَوِي عَدْلٍ وَلْيُحْفَظْ عِفَاصَهَا وَوَكَاهَا فَإِنْ جَاءَ صَاحِبُهَا فَلَا يَكُشُّ وَهُوَ أَحَقُّ بِهَا وَإِنْ لَمْ يَجِدْ صَاحِبُهَا فَإِنَّهُ مَالُ اللَّهِ يُؤْتِيهِ مَنْ يَشَاءُ»

“whoever found a lost property, let him have two just witnesses over it, and let him protect it and tie it, and if its owner comes along, then do not conceal it from him, he has more right to it. Otherwise it belongs to Allah (SWT), who gives it to whomsoever He wills.” (reported by Ahmad with an authentic chain), and so the

lost property is owned by whoever found it if the conditions are met.

Fifth: the recompense of the *Khalifah*, assistants, governors, and all other rulers. It is narrated from the Prophet ﷺ that when he appointed ‘Itaab Bin Usaaid as a governor over Makkah, he ﷺ paid him a *Dirham* for each day. It is narrated that ‘Itab addressed the people in Makkah and said:

« يَا أَيُّهَا النَّاسُ، أَجَاعَ اللَّهُ كِيدَ مَنْ جَاءَ عَلَى دِرْهَمٍ، فَقَدْ رَزَقَنِي اللَّهُ دِرْهَمًا كُلَّ يَوْمٍ، فَلَيَسْتُ بِي حَاجَةٌ إِلَى أَحَدٍ»

“O people, Allah starves a person who keeps hungry after spending a Dirham. Allah has provided me a Dirham every day, so I have no need for anyone” (reported by Ibn Sa’d in *Al-Tabaqat* with a Mursal chain whose narrators are trustworthy). And it is narrated that the day after Abu Bakr (ra) was given the pledge of allegiance, he went out to sell clothes as he used to before taking the pledge, and so he met Umar (ra) on the way who asked him: “*where are you going*” to which Abu Bakr (ra) replied: “*to the market*”. So Umar (ra) asked him: “*And what about the Muslims’ affairs?*” to which Abu Bakr (ra) replied: “*And how will I provide for my family?*”. Umar (ra) then said: “*We will fix a payment to you, and so they gave him half a sheep every day*”, reported by Ibn Hajar in *Fateh Al-Bari*, and Al-Zayla‘i reported something similar in *Nasab Al-Rayah*. That was a consensus of the companions to recompense the *Khalifah*. So this is the recompense for the *Khalifah*, governors, and ‘Amil which they then possess. Therefore, it is from the causes of possession and it is not a salary, so it is not categorised under the section of hiring an employee.

These five circumstances are encompassed by the fifth means from the means of ownership. These evidences for the five

means of ownership are confirmed through investigation of the texts as being the only means of ownership. In which case they are the permission of the *Shari'ah* for ownership, and anything other than these five means are from the means of increasing property, such as trade, industry, agriculture, which are not means of ownership. With this explanation the evidences of the article have been clarified.

Article 132

The disposal of property is restricted by the permission of the Legislator (swt), for both of spending and investment. Squandering, extravagance and miserliness are all forbidden. Capitalist companies, co-operatives and any other type of transactions which contradict the *Shari'ah* are forbidden. Interest, fraud, monopolies, gambling and anything similar are all forbidden.

The evidence for this is the evidence regarding spending wealth and the evidence of verbal disposals of wealth such as selling, renting and so on, which are the evidences regarding increasing property.

As for the evidence of expenditure, Allah (swt) said:

﴿لِيُنْفِقَ ذُو سَعْةٍ مِّنْ سَعْتِهِ ﴾ [الطلاق: ٧]، وقال تعالى في النبي عن الإسراف: ﴿ وَلَا تُسْرِفُوا إِنَّهُ لَا يُحِبُّ الْمُسْرِفِينَ ﴾ [الأنعام: ١٤]، وقال: ﴿ وَلَا تُبَذِّرْ تَبَذِّرًا ﴾ [الإسراء: ٢٣]، وقال في النبي عن

التقىير: ﴿وَالَّذِينَ إِذَا أَنفَقُوا لَمْ يُشْرِفُوا وَلَمْ يَقْتُرُوا وَكَانَ بَيْنَ ذَلِكَ

قَوَاماً ﴿١٧﴾

“Let a man of wealth spend from his wealth.” (TMQ 65:7).

Regarding the prohibition of squandering, Allah (swt) said: “**And be not excessive (extravagant). Indeed, He does not like those who commit excess.**” (TMQ 7:31), and He (swt) said: “**And do not spend wastefully; Indeed, the wasteful are brothers of the devils.**” (TMQ 17:26-7).

With respect to the prohibition of miserliness, Allah (swt) said: “**And [they are] those who, when they spend, do so not excessively or sparingly but are ever, between that, [justly] moderate.**” (TMQ 25:67).

With respect to verbal disposals, the Legislator (swt) restricted them to specific transactions, such as selling, rent, partnership, and so on, and specified the manner they should be undertaken and prohibited any other method. The Prophet ﷺ said:

«مَنْ عَمِلَ عَمَلاً لَّيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ»

“If anyone introduces in our matter something which does not belong to it, it is rejected.” (reported by Muslim from Aisha(ra)). So this is a restriction that the transactions have to be carried out upon a specific method, and a clear prohibition of specific transactions, which is that the transactions to increase wealth are restricted to that which is in accordance with the permission of the Legislator (swt).

There are actions which have been ordered to be undertaken based upon a specific restricted form, and the *Shari’ah* texts related

conditions for the concluding of a transaction and conditions for its validity in a decisive manner. Therefore, to carry out this transaction upon the form that has been explained by the *Shari'ah* text is obligatory, and it should fulfil all the conditions for contraction and the validity that were mentioned in the *Shari'ah* text. If it was undertaken in a manner which contradicts the text or does not fulfil all the conditions for contraction and validity, then it has contradicted the *Shari'ah*, and it would either be invalid if the conditions on contraction were not met, or defective if it contradicted anything that the *Shari'ah* ordered or prohibited. This would be a contradiction against the *Shari'ah*, in other words, a contradiction of the orders and prohibitions of Allah (swt), which is sinful since it is considered to be something that the *Shari'ah* forbade.

An example of that is the *Shari'ah* contract: the Legislator (swt) ordered that it should be between two contracting parties; the Prophet ﷺ said:

«الْبَيْعَانِ بِالْخَيْرِ»

“The two parties to a transaction both have the choice.” (agreed upon from Ibn Umar and Hakim Bin Hizam), and Allah (swt) said in a *Qudsi* narration:

«أَنَا ثَالِثُ الشَّرِيكَيْنِ»

“I make a third with two partners.” (reported by Abu Dawud from Abu Hurayrah, and he authenticated it and Al-Dhahabi confirmed it). And He (swt) ordered the contract to be upon offer and acceptance. So if the contract in any transaction does not fulfil these conditions: two contracting parties along with offer and acceptance, the contract is invalid and not concluded. Any action which occurred in this transaction is considered as a sin

and a *Haram* action, since it would be considered a transaction that the *Shari'ah* had forbidden. An example of that would be the share companies, since they are concluded from one side, and by someone simply signing to the conditions of the company they become a partner and also by simply buying shares in the company they become a partner. According to the capitalists this is from the actions of individual choice, like an endowment or bequest in Islam. So in the share company there are not two contracting parties but rather there is only one party, and there is no offer and acceptance - rather there is acceptance alone. In the *Shari'ah* the company must be based upon a contract of offer and acceptance between two contracting parties, and similar to it is selling, renting, marriage and any other comparable contracts. Accordingly, the share company is not contracted and so is invalid and *Haram*, since it contradicts the *Shari'ah* and is considered to be prohibited by it. The share company neglected the order of Allah (swt) with respect to the conditions of contracting a company, and is an action that Allah (swt) prohibited since He (swt) prohibited people from contradicting His (swt) orders:

﴿فَإِنْ يَحْذِرُ الَّذِينَ يَخْالِفُونَ عَنْ أَمْرِهِ﴾

“So let those beware who dissent from the Prophet's order.” (TMQ 24:63). Therefore, establishing such a company would be committing a sin and a *Haram* action, and so it is from the transactions forbidden by the *Shari'ah* because every invalid contract is *Haram*.

In a similar fashion, life insurance, or any insurance for goods or property is *Haram*, since it is a contract between the insurance company and the insuring person in which the latter asks the insurance company to give him a promise that it will compensate him for that object which he loses or for its price with

regard to goods or property, or a certain sum of money with regard to life and the like such as insurance for a limb. This takes place if the accident which was specified occurs within a defined period in exchange for a certain amount of money. In insurance there is no person being guaranteed, nor a joining of liabilities, since there is no person present who the company guaranteed and joined their liability to. Also in insurance there is no financial obligation for the believer with anyone that the insurance company committed him to, since the believer did not have a financial obligation to anyone, and then the company came and guaranteed him. Insurance is a guarantee, and the guarantee according to the *Shari'ah* is the joining of the liability of the guarantor with that of the one being guaranteed to fulfil the obligation, and so it is imperative that there should be a joining of liabilities, and there must be a guarantor, someone being guaranteed, and the issue that he is being guaranteed for, and it is imperative that it is a guarantee for a confirmed obligation they are liable for. These are the conditions for contraction and validity in the guarantee, and as long as the insurance contract does not fulfil these *Shari'ah* conditions then it is invalid according to the *Shari'ah* and is *Haram*. Therefore, to take out insurance is committing a sin and a *Haram* action and consequently is a transaction that the *Shari'ah* prohibited because every invalid transaction is *Haram*.

These actions such as partnerships and guarantees have been restricted to a specific manner and specific conditions explained by *Shari'ah* texts, and so it is obligatory to be bound to them, and this is proof that the actions to increase property are restricted by the permission of the Legislator (swt).

There are actions which have had direct prohibitions related, such as fraud, due to what was narrated from Abdullah Bin Umar (ra) that a man mentioned to the Prophet ﷺ that he had been cheated in a sale, so he ﷺ said:

﴿فَإِذَا حَدَرَ الَّذِينَ سُخْنَالُفُونَ عَنْ أَمْرِهِ﴾

“When you enter a transaction, say, “No trickery.”
 (agreed upon from Ibn Umar). And he ﷺ said:

«بَيْعُ الْمُحَفَّلَاتِ خَلَابَةٌ وَلَا تَجْلُّ الْخَلَابَةُ لِمُسْلِمٍ»

“Selling Muhaftalahs (unmilked animals) (to deceive the buyer) is trickery, and trickery is not lawful for the Muslim”
 (reported by Ahmad and Ibn Maja from Abdullah Bin Mas’ud, and Ibn Abi Shaybah and ‘Abd Al-Razzaq reported it *Mawquf* (the chain ends at the companion) to Ibn Mas’ud with an authentic chain). Accordingly fraud is *Haram*, as well as actions like monopolising, due to the words of the Prophet ﷺ:

«مَنْ احْتَكَرَ فَهُوَ خَاطِئٌ»

“Whoever monopolises is in error”, (reported by Muslim from Mu’ammar b. ‘Abd Allah Al-‘Adawi), and like gambling due to the words of Allah (swt):

يَأَيُّهَا الَّذِينَ إِنَّمَا أَخْنَمُ وَأَمْسِرُ وَالْأَنْصَابُ وَالْأَزْلَمُ رِجْسٌ
 مَّنْ عَمِلَ الشَّيْطَانَ فَأَجْتَبَهُ لَعْلَكُمْ تُفْلِحُونَ ﴿١﴾ [المائدة]. وكالربا لقوله تعالى:
 وَأَحَلَّ اللَّهُ أَبْيَعَ وَحَرَّمَ أَرْبَوًا

“O you who have believed, indeed, intoxicants, gambling, [sacrificing on] stone alters [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful.” (TMQ 5:90). Similarly, interest, due to words of Allah (swt): **“But Allah has permitted trade and has forbidden interest (Usury).”** (TMQ 2:275). This

clear prohibition for these actions and those similar to them is a restriction upon how to conduct the increase in property, as it should not be done through these and similar transactions. This is another evidence that the action to increase property is restricted by the permission of the Legislator (swt).

Article 133

Tithed land ('Ushriyyah) constitutes land within the Arabian Peninsula and land whose owners had embraced Islam, whilst possessing the land, before the Islamic State conquered them by Jihad. Taxed land (Kharajiyah) is all land, other than the Arabian Peninsula, which was opened by jihad, whether through war or peace treaties. The 'Ushriyyah land, together with its benefits, is owned by individuals, whereas the Kharajiyah land is owned by the State, while individuals own its benefits. Every individual has the right to exchange, through Shari'ah contracts, the tithed land and the benefits of taxed land. All people can inherit these, the same as with all other wealth.

Its evidence is that land is the same as wealth, and is considered as booty for the Muslims if it was taken through war, similar to all the war booty. This would be the *Kharajiyah* land and control of it belongs to the *Bayt Al-Mal*. If on the other hand, its inhabitants accepted Islam, then it would be considered like the wealth of the Muslims, owned by them and they are responsible for it, and this is the '*Ushriyyah* land.

As for the evidence as to the land being a booty like the rest of the wealth, Hafs b. Ghiyath narrated from Abu Dhi'b from Al-Zuhri who said:

«قَضَى رَسُولُ اللَّهِ ﷺ فِيمَنْ أَسْلَمَ مِنْ أَهْلِ الْبَحْرَيْنِ أَنَّهُ قَدْ أَحْرَرَ دَمَهُ وَمَالَهُ إِلَّا أَرْضَهُ، فَإِنَّهَا فِيْهِ لِلْمُسْلِمِينَ، لَا نَهُمْ لَمْ يُسْلِمُوا وَهُمْ مُمْتَبِعُونَ»

“The Messenger of Allah judged that the people who became Muslim from Bahrain have their blood and wealth protected, apart from their land, since it was a booty for the Muslims, as they did not embrace Islam at first and rather resisted” (from the book *Al-Kharaj* by Yahya b. Adam).

With respect to the fact that it is not split amongst the fighters like the rest of the booty, this is because of the difference which occurred regarding this rule between Bilal (ra) and Al-Zubayr (ra) on one side and Umar (ra) on the other, while the evidence of Umar (ra) was stronger, as well as his being supported by ten people from the Ansar and *Muhajireen*. Al-Zubayr (ra) thought that the land of Egypt which had been opened should be like the transferable wealth which was divided between the fighters, but Umar (ra) rejected this when Amr Bin Al-Aas (ra) wrote to him, and so he replied:

«أَفَرَّهَا حَتَّى يَغْرُوَ مِنْهَا حَبْلُ الْحَبْلَةِ»

“leave it so that the children of the next generation will fight from it”. In other words, it will be property for the Muslim generations to come. And Bilal (ra) held the same opinion Al-Zubayr (ra) with respect to the land of Iraq, and so Sa’ad (ra) wrote to Umar (ra) about that so Umar (ra) replied to him:

«وَا ترَكَ الْأَرْضَيْنِ وَالأنْهَارَ لِعَمَالِهَا لِيَكُونَ ذَلِكَ فِي أَعْطِيَاتِ الْمُسْلِمِينَ، إِنَّا لَوْ قَسَمْنَاهَا بَيْنَ مَنْ حَضَرَ لَمْ يَكُنْ لَمَنْ بَعْدَهُمْ شَيْءٌ»

“and leave the lands and rivers for its workers in order that it can provide for the Muslims, since if we divide it between

those who are present, there will be nothing for those who come after them” (reported by Abu ‘Ubayd in *Al-Amwal* and Abu Yusuf in *Al-Kharaj* and Yahya b. Adam in *Al-Kharaj*, from Yazid b. Abi Habib). Umar’s (ra) proof for this was the words of Allah (swt):

﴿وَمَا أَفَاءَ اللَّهُ عَلَى رَسُولِهِ مِنْهُمْ فَمَا أَوْجَفْتُمْ عَلَيْهِ مِنْ حَبْلٍ وَلَا رِكَابٍ﴾ [الحشر ٦] الآية فإن الله قد قال: ﴿فَلِلَّهِ وَلِرَسُولِهِ وَلِذِي الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسَاكِينِ وَأَبْنِ السَّيِّدِ﴾ [الحشر ٧]، ثم قال: ﴿لِلْفُقَرَاءِ الْمُهَاجِرِينَ﴾

“And what Allah restored [of property] to His Messenger from them - you did not spur for it [in an expedition] any horses or camels.” (TMQ 59:6), and then Allah (swt) said: “- It is for Allah and for the Messenger and for [his] near relatives and orphans and the needy and [stranded] traveller.” (TMQ 59:7), then said: “For the poor emigrants” (TMQ 59:8), and then was not content until others were joined to them and so said:

﴿وَالَّذِينَ تَبَوَّءُ الْأَدَارَ وَالْإِيمَانَ مِنْ قَبْلِهِمْ سُبْحَبُونَ مَنْ هَاجَرَ إِلَيْهِمْ﴾

“And [also for] those who were settled in Al-Madinah and [adopted] the faith before them. They love those who emigrated to them.” (TMQ 59:9) who are the *Ansar* specifically, and then was not content until others were joined to them and so said:

﴿وَالَّذِينَ جَاءُو مِنْ بَعْدِهِمْ﴾

“And [there is a share for] those who came after them.”, which is general encompassing everyone who came after them, and in this manner the booty was made for all of those mentioned. So

this was Umar's (ra) evidence regarding that the land whose inhabitants had not embraced Islam and was opened through conquest would become a wealth for all of the Muslims until the Day of Judgement, and that the *Imam* possesses its benefits for the sake of the people. He consulted with the Muslims, and they differed, and so he called for ten of the leaders and respected people from the *Ansar*, five from Al-Aws and the other five from Al-Khzraj, and he said to them:

«وقد رأيت أن أحبس أرضين بعلوّجها، وأضع فيها الخراج، وفي رقابهم الجزية يؤدونها، فتكون فيئاً لل المسلمين المقاتلة والذرية من بعدهم.رأيتم هذه الشغور لا بد لها من رجال يلزمونها،رأيتم هذه المدن العظام كالشام والجزرية والكوفة والبصرة ومصر لا بد لها أن تشحن بالجيوش وإدار العطاء لهم. فمن أين يعطى هؤلاء إذا قسمت الأرضون والعلوج؟»

“I thought I should keep the infidels on the land, and put a land tax (Kharaj) upon it, and a Jizya upon their necks to pay, and so it would be a booty for the Muslims who fought and for their offspring after them. Do you see these frontiers that require men to defend them?, do you see these large cities like As-Sham, Al-Jazeera, Kufa, Basra and Misr which have to be loaded with soldiers, and money has to be spent upon them?, so from where will we get the money if we divide the land and the infidels?” (As reported by Abu Yusuf in Al-Kharaj) So all of them said:

الرأي رأيك، فنعم ما قلت وما رأيت

“Your opinion is our opinion, what you have said and seen is correct”. Therefore, Umar's (ra) citation of the verse and the reason that leaving the land would mean it would be continuous revenue for the *Bayt Al-Mal* was powerful evidence, and accordingly the land that was conquered was considered as a

Kharajiyah land; it was owned by the State and its inhabitants utilised it.

This is the rule irrespective of whether the land was conquered through force such as the land of Iraq, or through agreement, such as the city of *Bayt Al-Maqdis*. However, in the situation that the land was conquered through agreement, if the agreement stipulated a certain amount of tax then it is obligatory to interact upon the basis of that agreement, due to the words of the Messenger ﷺ:

«إِنَّكُمْ لَعَلَّكُمْ تُقَاتِلُونَ قَوْمًا فَيَتَّقَوِّنُكُمْ بِأَمْوَالِهِمْ دُونَ أَنفُسِهِمْ وَأَبْنَائِهِمْ
وَيُصَالِحُونَكُمْ عَلَى صُلْحٍ فَلَا تَأْخُذُوا مِنْهُ فَوْقَ ذَلِكَ، فَإِنَّهُ لَا يَحِلُّ لَكُمْ»

“Truly you may fight a people, and they will save themselves and their children by their property, and then they conclude peace with you, so do not take anything more from them, because it is not lawful to you”. Abu ‘Ubayd said regarding this narration: the *Sunnah* in the land opened by treaty is that it is not worked more than what was agreed, even if they were capable of more than that, due to his ﷺ words:

«فَلَا تَأْخُذُوا مِنْهُ فَوْقَ ذَلِكَ، فَإِنَّهُ لَا يَحِلُّ لَكُمْ»

“so do not take anything more from them, because it is not lawful to you”, reported by Abu ‘Ubayd in *Al-Amwal*, and even though there is an unknown narrator in the chain, the companions all adhered to leaving the land opening by treaty according to the treaty it was opened with, as from the narration

«وَالْمُسْلِمُونَ عَلَى شُرُوطِهِمْ إِلَّا شَرْطًا حَرَمَ حَالًا أَوْ أَحَدًا حَرَامًا»

"And the Muslims will be held to their conditions, except the conditions that make the lawful unlawful, or the unlawful lawful." which Al-Tirmidhi reported and said was *Hasan Sahih*, from Kathir b. ‘Abd Allah b. ‘Amru b. Al-‘Awf Al-Muzani from his father from his grandfather, and is applied here.

If no condition is made as happened with *Bayt Al-Maqdis* then it is treated like the land which was conquered through force, since it is booty for the Muslims.

All of this applies outside of the Arabian Peninsula. As for the Arabian Peninsula, all of its land is considered to be *‘Ushriyyah* land since the Prophet ﷺ conquered Makkah through force and left its land to its inhabitants, and did not impose any land tax upon them. This is because the tax is upon the land in the way that the *Jizya* is upon the individual, and so it is not established in the Arab land in the same way that no *Jizya* was established upon them, because the idol worshippers from the Arabs had the choice of either embracing Islam, or the sword:

﴿تُقْبَلُوهُمْ أَوْ يُسْلِمُونَ﴾

“You may fight them, or they will embrace Islam.” (TMQ 48:16), and, accordingly, their land is *‘Ushriyyah* and not *Kharajiyyah*, just like any land whose inhabitants embraced Islam.

The *‘Ushriyyah* land has *Zakah* upon it, which is that the State takes 10 per cent of its actual produce if it is irrigated by natural means, and if it is irrigated by watering or industrial irrigation then 5 per cent of the actual produce is take. Muslim reported from Jabir who said:

«فِيمَا سَقَتِ الْأَنْهَارُ وَالْغَيْمُ الْعُشُورُ، وَفِيمَا سُقِيَ بِالسَّائِيَةِ نِصْفُ الْعُشُورِ»

“A tenth is payable on what is watered by rivers, or rains, and a twentieth on what is watered by camels.” This tenth is considered Zakah and is to be placed in the *Bayt Al-Mal*, and should not be spent except upon one of the eight categories mentioned in the verse:

﴿ إِنَّمَا الْصَّدَقَةُ لِلْفُقَرَاءِ وَالْمَسَاكِينِ وَالْعَدْلَمِينَ عَلَيْهَا وَالْمُؤْلَفَةُ قُلُوبُهُمْ
وَفِي الرِّقَابِ وَالْغَرَمِينَ وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ فَرِيضَةٌ مِّنْ أَنَّ اللَّهَ وَاللَّهُ عَلِيمٌ
﴾

حَكِيمٌ

“Zakah expenditures are only for the poor and for the needy and for those employed to collect [Zakah] and for bringing hearts together [for Islam] and for freeing captives [or slaves] and for those in debt and for the cause of Allah and for the [stranded] traveller - an obligation [imposed] by Allah. And Allah is Knowing and Wise.” (TMQ 9:60). It is reported from Al-Hakim, Al-Bayhaqi and Al-Tabarani from the narration of Abu Musa and Mu'adh when the Prophet ﷺ sent them to Yemen, to teach the people the issues of the *Deen*, and so he ﷺ said:

«لَا تَأْخُذَا الصَّدَقَةَ إِلَّا مِنْ هَذِهِ الْأَرْبَعَةِ: الشَّعِيرِ، وَالْحِنْطَةِ، وَالرَّيْبِ، وَالثَّمْرِ»

“Do not take any Zakah except on these four crops: barley, wheat, raisins and dates.”

As for the *Kharajiyah* land, the tax of *Al-Kharaj* is applied. The State takes a specific amount from the owner of the land, which is specified and limited according to the approximate produce of the land in usual circumstances, and not upon the actual produce. It is calculated according to its potential, in order that neither the owner of the land nor the *Bayt Al-Mal* (treasury) is disadvantaged. The *Kharaj* is taken from the owner each year,

irrespective of whether the land was cultivated or not, or whether it was fertile or barren. Abu Yusuf reported in *Al-Kharaj* from ‘Amru b. Maymun and Harithah b. Madrib, saying:

«بعث عمر بن الخطاب (رضي الله تعالى عنه) عثمان بن حنيف على السواد، وأمره أن يمسحه، فوضع على كل جريب عامرٍ أو غامرٍ، مما يعلم مثله، درهماً وقفيزاً»

“*Umar Bin Al-Khattab sent ‘Uthman Bin Hanif to Sawad, and commanded him to survey it, and so he placed tax of a Dirham and a qafiz upon each part of arable land*”. Al-Hujaj b. Arta’ā from Ibn Awf narrated:

«أن عمر بن الخطاب رضي الله عنه مسح السواد، ما دون جبل حلوان، فوضع على كل جريب عامرٍ أو غامرٍ يناله الماء بدلوا أو بغيره، زرع أو عُطل، درهماً وقفيزاً واحداً»

“*Umar b. Al-Khattab surveyed the land of Sawad, below mountain Hilwan, a Dirham and a qafiz was placed upon each part of arable land (or sunken by water land) that water reached by bucket or anything else, whether it was cultivated or not.*” (reported by Abu Yusuf in *Al-Kharaj*).

As for imposing the tax upon the *Kharajiyyah* land, this is because the tax (*Al-Kharaj*) is the word for leasing and revenue, as used in the words of the Prophet ﷺ:

«الخراج بالضمان»

“the produce is for the responsible” (reported by Ahmad and the authors of the books of sunan, and Al-Tirmidhi said it was Hasan Sahih and similarly Al-Hakim authenticated it and Al-Dhahabi agreed with him). And the land here is owned by the Bayt Al-Mal. Then, it is given to the people in order to utilise it, and a tax is levied upon them which is for a fixed amount annually, and so it is just like a lease for them, which is why its calculation is left

to the Khalifah, but it cannot exceed what the land is able to produce. The Kharaj is put in the Bayt Al-Mal in other than the Zakah section, and it is spent upon all aspects the State sees fit like the other wealth.

The *Kharaj* imposed upon the land which was conquered by force remains forever, and so if the people embraced Islam or sold the land to Muslims, the *Kharaj* is not voided, since its characteristic of being opened by conquest remains until the end of time. It is obligatory upon them to pay the 'Ushr with the *Kharaj*, since the *Kharaj* is a right upon the land and the 'Ushr is a right obligated upon the produce of the land of the Muslim according to the verses and narrations. There is no contradiction between these two rights, since they are obligated due to two different causes. As for what the *Hanafis* use as proof for the non-joining between '*Ushr*' and '*Kharaj*', the narration they report from the Messenger of Allah ﷺ

(لا يجتمع عشر و خراج في أرض مسلم)

(The 'Ushr [land Zakah] and Kharaj [land tax] are not combined in the land of a Muslim) – this is not a narration, and is not confirmed by any of the collectors of narrations from the words of the Messenger ﷺ.

So the payment of *Kharaj* is started first. If after paying *Kharaj* there remains crops and fruits which reach the *Nisab* (prescribed minimum amount) on which *Zakah* has to be paid, then the *Zakah* is exacted. If it does not reach the *Nisab* then there is no *Zakah* on him.

If the Muslim owns '*Ushriyyah* land, then he has to pay the *Zakah* upon the basis of either 10 per cent or 5 per cent, and if he owns *Kharajiyah* land then he has to pay both *Kharaj* and *Zakah*, in other words, 10 per cent or 5 per cent.

If a disbeliever owns *Kharajiyah* land then he has to pay *Kharaj* and if he owns *'Ushriyyah* land then he must pay *Kharaj* and not *'Ushr* since the land must not be left unused, and since he is not from those upon whom the *'Ushr* applies so then *Kharaj* is assigned.

As for whoever revives a dead land from the *Kharaj* land, which previously had *Kharaj* paid upon it before it became dead land, then it becomes *Kharajiyah* land, irrespective of whether it was a Muslim or non-Muslim who revived it.

This is if it was revived for the sake of agriculture. However, if it was for residential purposes or to establish factories, storehouses or pens, then neither *'Ushr* nor *Kharaj* would apply to it, irrespective of whether the land was originally for *'Ushr* or *Kharaj*. When the companions opened Iraq and Egypt, they developed Kufa, Basra and Fustat, which were then inhabited at the time of Umar (ra), and others came and inhabited the areas with them, and they did not charge them *Al-Kharaj*, and nor was *Zakah* paid from it since it is not obliged upon homes and buildings.

It is possible to trade and inherit *'Ushriyyah* and *Kharajiyah* land from its owners, because it is a literal possession belonging to its owner, and so all the rules regarding possession apply to it. In relation to *'Ushriyyah* land this is clear, and as for *Kharajiyah* land then possession of it is the same as possessing *'Ushriyyah* land without any difference between them from the angle of possession, except for two issues: firstly, with respect to what it is that is owned and secondly, with respect to what is obligatory upon the land. As for the issue of what it is that is possessed, the owner of the *'Ushriyyah* land possesses the land itself and its yields, while the owner of the *Kharajiyah* land possesses the yields alone. Consequently, if the owner of *'Ushriyyah* land wanted to give it as a charity, he is permitted to do

so anytime he wishes. However, the owner of *Kharajiyyah* land is unable to do so, since in order to give anything as an endowment, it is a condition that the person donating it own the object itself, and the owner of *Kharajiyyah* land does not own the land itself but rather owns its yields, since the title of the land itself belongs to the *Bayt Al-Mal*.

And as for the issue of what is obligatory upon the land, the 10 or 5 per cent is applicable to the '*Ushriyyah*' land; in other words, the *Zakah* upon what was actually produced by the land if it reaches the minimum applicable amount (*Nisab*). The land tax (*Kharaj*) is imposed upon the *Kharajiyyah* land, in other words, the annual amount specified by the State, irrespective of whether it was planted or not, cultivated or not, or whether the crop was harvested or there was a drought. These two issues are the only differences between the rules regarding the '*Ushriyyah*' and *Kharajiyyah* land, and there is nothing apart from them which differentiates between the two, and so the rules regarding them are the same, which are the rules regarding possession of wealth. Therefore, the right is there for the land, whether '*Ushriyyah*' or *Kharajiyyah*, to be exchanged by means of any of the types of *Shari'ah* transactions such as contracts and so on, and for them to be inherited from their owners like all other types of wealth.

Article 134

Dead land is possessed through its revival and fencing. Any other type of land is not possessed except through a *Shari'ah* means such as inheritance, purchase, and donation by the State.

The evidence for the article are the words of the Prophet ﷺ:

«مَنْ أَحْيَا أَرْضًا مَيِّتَةً فَهُوَ لَهُ»

“whoever revives dead land, it belongs to him” reported by Al-Bukhari *Mawquf* to Umar (ra), and it is narrated with an authentic chain connected to the Prophet ﷺ by Ahmad and Al-Tirmidhi from Jabir, and:

«مَنْ أَحَاطَ حَائِطًا عَلَى أَرْضٍ فَهُوَ لَهُ»

“whoever surrounds a land with a wall, it belongs to him” reported by Ahmad and Abu Dawud with a chain authenticated by Al-Jarwud and Al-Zayn, and:

«عَادِيُّ الْأَرْضِ اللَّهُ وَلِرَسُولِهِ، ثُمَّ هِيَ لَكُمْ»

“Aadiy land is for Allah and His Messenger, and then for you” reported by Abu ‘Ubayd by an authentic *Mursal* narration, and Abu Yusuf mentioned in *Al-Kharaj* from Salam b. ‘Abd Allah that Umar b. Al-Khattab (ra) said on the pulpit:

«من أحيا أرضاً ميتةً فهي له، وليس لمحتجز حق بعد ثلاث سنين»

“whoever revives a dead land, it belongs to him, and the one who fences it off has no right to it after three years (if not cultivating it).” The text of these narrations indicate that if an individual revives a dead land or fences it, in other words, putting stones, fencing or a wall around it, then it becomes their possession. The understanding of the texts is that if the land was not dead then he could not take it into possession through revival or fencing, even if it was not cultivated, or not suitable for cultivation without any work being done to it, and even if the owner was not known. Therefore, if the land was not dead then it cannot be possessed except by one of the causes of possession if its owner was known, and if the owner was unknown it could not be

possessed unless the *Khalifah* granted it, and so it becomes possessed through this grant. If it is dead land, then it is possessed either through its revival or by placing one's authority over it even if that occurs without necessarily reviving the land.

The dead land is the land where there are no signs upon it that it belongs to anyone, so there is no evidence of any kind of walling, agriculture, building or anything similar, and no owner or anyone utilising it. This is the dead land, and anything else is not considered dead land even if there was no owner or person utilising it.

Article 135

It is completely prohibited to rent land for agriculture, irrespective of whether the land was *Kharajiyyah* or *'Ushriyyah*. Likewise, temporary share-cropping is also prohibited. *Musaaqa* (renting trees for a portion of their yields) is permitted without restriction.

There are several evidences for the article, and all of them mention the prohibition of renting land; it is narrated from Rafi' Bin Khadij who said:

«كُنَّا نُخَابِرُ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ، فَذَكَرَ أَنَّ بَعْضَ عُمُومَتِهِ أَثَّاهُ فَقَالَ: نَهَى رَسُولُ اللَّهِ ﷺ عَنْ أَمْرٍ كَانَ لَنَا نَافِعًا، وَطَوَاعِيَةً رَسُولُ اللَّهِ ﷺ أَنْفَعُ لَنَا وَأَنْفَعُ. قَالَ: فُلْنَا: وَمَا ذَاكُ؟ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: مَنْ كَاتَثَ لَهُ أَرْضٌ فَلِيَزْرَعْهَا أَوْ لِيَزْرَعْهَا أَخَاهُ، وَلَا يُكَارِبَهَا بِثُلُثٍ وَلَا بِرُبْعٍ وَلَا بِطَعَامٍ مُسَمًّى»

“We used to employ people to till land for a share of its produce. He then maintained that, one of his uncles came to him and said: The Messenger of Allah (saw) forbade us from a work beneficial to us. But obedience to Allah and His Messenger (saw) is more beneficial to us. We asked : What is that? He said: The Messenger of Allah (saw) said: If anyone has land, he should cultivate it, or lend it to his brother for cultivation. He should not rent it for a third or a quarter (of the produce) or for specified among of produce.” (reported by Abu Dawud). It is narrated from Ibn Umar who said:

«مَا كُنَّا نَرِى بِالْمُرَازِعَةِ بِأَسَأَ حَتَّى سَمِعْنَا رَافِعَ بْنَ خَدِيجَ يَقُولُ: نَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنِ الْمُخَابَرَةِ»
«عَنْهَا»

“We didn’t use to see any problem with share-cropping until we heard Raafit’ Bin Khadij say that the Messenger of Allah forbade it” (reported by Ibn Qudamah in Al-Mughni and also by Muslim and Al-Shafi’i with slight differences). Jabir said:

«نَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنِ الْمُخَابَرَةِ»

“The Messenger of Allah ﷺ forbade Al-Mukhabarah” (reported by Muslim), and the Mukharabah is share-cropping. Al-Bukhari narrated on the authority of Jabir: “*We used to engage in share-cropping, giving a third and a quarter and a half, and so the Prophet ﷺ said:*

«مَنْ كَانَتْ لَهُ أَرْضٌ فَلْيَزْرُعْهَا أَوْ لِيَمْنَحْهَا، فَإِنْ لَمْ يَفْعَلْ فَلْيُمْسِكْ أَرْضَهُ»

“Whoever has land, then he should cultivate it or grant it to someone else, and if he does not do that, then it is taken from him”. Abu Dawud narrated from Zayd b. Thabit who said:

«نَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ عَنِ الْمُخَابَرَةِ، قُلْتُ: وَمَا الْمُخَابَرَةُ؟ قَالَ: أَنْ تَأْخُذَ الْأَرْضَ
بِيَصْفٍ أَوْ ثُلْثٍ أَوْ رُبْعٍ»،

“The Messenger of Allah ﷺ forbade Al-Mukhabarah. I asked – and what is Al-Mukhabarah. He said to work on the land for a half, or a third, or a quarter”, and the narration of Rafi’:

«أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ نَهَى عَنْ كِرَاءِ الْمَزَارِعِ»

“The Prophet ﷺ forbade the leasing of farms” (agreed upon). And Zahir b. Raffi’ narrated:

«دَعَانِي رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ قَالَ: مَا تَصْنَعُونَ بِمَحَاقِلِكُمْ؟ قُلْتُ: نُؤَاجِرُهَا عَلَى الرُّبْعِ،
أَوْ عَلَى الْأَوْسُقِ مِنْ التَّمْرِ وَالشَّعِيرِ، قَالَ: لَا تَفْعَلُوا، ازْرُعُوهَا أَوْ أَمْسِكُوهَا»

“The Messenger of Allah called me and said: “What are you doing with your land?” I said: “We rent it out for a quarter or for amounts of dates and barley”. He said: “Do not do that, either cultivate it or hold onto it” (agreed upon). It is narrated from Abu Sa‘id who said:

«نَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ عَنِ الْمُحَاqَلَةِ»

“The Messenger of Allah prohibited Al-Muhaqala” (reported by Al-Nasa’i and Muslim), and Al-Muhaqalah is the renting of land for wheat. In Sahih Al-Bukhari it is mentioned that the Messenger of Allah ﷺ said:

«مَنْ كَانَتْ لَهُ أَرْضٌ فَلْيَرْعُهَا أَوْ لِيَمْنَحِهَا، فَإِنْ أَبِي فَلْيُمْسِكْ أَرْضَهُ»

“Whoever has land should cultivate it, or grant it to someone else, and if he refuses then his land is taken from him”, and in Sahih Muslim from Jabir:

«نَهَىٰ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ لِلأَرْضِ أَجْرٌ أَوْ حَظٌ»

“The Messenger of Allah ﷺ forbade the land to be used for a rent or share of the crop”. In Sunan Al-Nasa'i it is narrated:

«نَهَىٰ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ عَنْ كِرَاءِ الْأَرْضِ، فُلِنَا: يَا رَسُولَ اللَّهِ، إِذَا نُكْرِبَهَا بِشَيْءٍ مِّنْ الْحُبَّ، قَالَ: لَا، قَالَ: وَكُنَّا نُكْرِبُهَا بِالْتَّبْنِ، فَقَالَ: لَا، وَكُنَّا نُكْرِبُهَا عَلَى الرَّبِيعِ، قَالَ: لَا، ازْرِعْهَا أَوْ افْتَنِهَا أَخْحَاكَ»

“The Messenger of Allah prohibited the leasing of land. We said: "O Messenger of Allah, in which case we will lease it in exchange for some of the grain". He said: "no." We said: "We will lease it in exchange for figs. He said: no. We said: "we used to lease it upon rabee'. He said: "no, cultivate it or give it to your brother". And Rabee' is the small river, in other words, the river valley, meaning we used to lease for the part cultivated upon the Rabee' or in other words, next to the water. It is also narrated that 'Abd Allah b. Umar met and asked Rafi' Bin Khadij who said:

سمعت عمّي وكان قد شهدنا بدرًا يحدثنا: «أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ نَهَىٰ عَنْ كِرَاءِ الْأَرْضِ» أخرجه مسلم وذكر الحديث وفيه أن ابن عمر ترك كراء الأرض.

“I heard from my two uncles, who were amongst those who participated in Badr, that the Messenger of Allah prohibited the leasing of land” reported by Muslim, and he mentioned the narration which mentions that Ibn Umar stopped leasing land.

These narrations explicitly mention that the Messenger of Allah ﷺ prohibited the renting of land. And though a prohibition merely indicates a request to desist, the indication here indicates that the request is decisive. As for the issue of the prohibition of share-cropping, Abu Dawud mentioned a narration on the authority of Jabir who said:

سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: «مَنْ لَمْ يَنْدَرِ الْمُخَابَرَةَ، فَلْيَأْذَنْ بِحَرْبٍ مِّنْ اللَّهِ وَرَسُولِهِ»

"I heard the Messenger of Allah ﷺ say: "Whoever does not leave Al-Mukhabara (share-cropping) then he should take notice of war from Allah and His Messenger." (authenticated by Ibn Hibban and Al-Hakim, and Al-Mundhiri did not comment upon it). As for the general leasing of land, when the Messenger of Allah ﷺ prohibited them from leasing the land, the companions said to him ﷺ: we will lease it in exchange for some of the grain, and he ﷺ said: no, so they said we will lease it in exchange for figs, and he ﷺ said: no. And they then said: we used to lease it upon the river valley, and he ﷺ said: no. Then he ﷺ emphasised that by saying: "cultivate it or give it to your brother". This is clearly insistence upon the prohibition, which is a confirmation for it. And the decisiveness is apparent from the narration, since the Messenger ﷺ prohibited them from leasing the land in any way. The companions wanted to make certain circumstances as exceptions from this general prohibition, and so they presented the first circumstance to the Messenger ﷺ in order for him ﷺ to permit it for them by saying: "***in which case, we will lease it for some of the grain***", and the Messenger ﷺ answered them by rejecting their request by saying no. Then, they presented him ﷺ with a second situation different from the first in order to get his ﷺ permission for it, so they said: "***we will lease it in exchange for figs***", to which the

Messenger ﷺ replied no, rejecting that request as well. Then they presented a third situation other than the first two to the Messenger ﷺ in order to get his ﷺ permission, saying: “**We used to lease it upon the river valley**”, and so he ﷺ replied to them for a third time rejecting what they had requested by saying no. He ﷺ did not stop at that, but rather he ﷺ limited the way that the land could be used to one of two options, saying:

«أَرْعُهَا أَوْ افْتَحْهَا أَخْلَكَ»

“**Cultivate it or give it to your brother**”. This repetition of the rejection alongside the differing circumstances alone is enough to indicate that the prohibition was a decisive one. Additionally, this restriction is also sufficient on its own to indicate decisiveness, since his ﷺ words:

«أَرْعُهَا أَوْ افْتَحْهَا أَخْلَكَ»

“**Cultivate it or give it to your brother**” are for the sake of restriction, and the word: “or” is to give a choice between two issues, do this or this, which means do not do anything other than these options. Based upon this, this narration, due to the repetition and the manner of that repetition, and the restriction mentioned, clearly indicates decisiveness and so it is an indication that the prohibition related in the narrations prohibiting renting the land generally is a decisive prohibition.

Something else that supports the fact that the prohibition is for *Tahrim* (prohibition), is what has been narrated in Abu Dawud from Rafi' (and authenticated by Al-Hakim) who said:

«أَنَّهُ رَعَ أَرْضًا فَعَمِّرَ بِهِ النَّبِيُّ ﷺ وَهُوَ يَسْقِيْهَا، فَسَأَلَهُ: لِمَنِ الرَّزْعُ وَلِمَنِ الْأَرْضُ؟ فَقَالَ: رَعَى بِتَدْرِي وَعَمَلَيْ، لِي الشَّطْرُ وَلِيَنِي فُلَانُ الشَّطْرِ، فَقَالَ: أَرْبِيمَا، فَرُدَّ الْأَرْضَ عَلَى أَهْلِهَا وَخُذْ نَمَقَّاتَكَ»

“He had cultivated a land. The Prophet (peace be upon him) passed him when he was watering it. So he asked him: To whom does the crop belong, and to whom does the land belong? He replied: The crop is mine for my seed and labour. The half (of the crop) is mine and the half for so-and-so. He said: You conducted usurious transaction. Return the land to its owner and take your wages and cost.”. The Prophet ﷺ described this transaction as being usury, and usury is *Haram* according to definite text. Additionally, the Messenger ﷺ requested Rafi' to return the land to its owner, with whatever was there in terms of agriculture, and to take his expenses from them; in other words, he ﷺ requested him to void the transaction. This indicates that the prohibition is a decisive one and so it is *Haram*.

Therefore, these three narrations - the narration of Jabir which mentions the threat for partaking in *Mukhabarah*, in other words, share-cropping, and the narration of Al-Nasa'i with the repetition and restriction, and the narration of Raafi' which describes the renting of land as being usury and voiding the transaction - are a definite indication that the prohibition is decisive, which indicates the *Tahrim* of renting land generally.

Due to what is mentioned explicitly in these narrations, and what is understood from them, there is not the slightest doubt that it is forbidden to rent land generally. Yet some of the scholars are found to have permitted the renting of land. So we will also explain the evidences that some of the scholars used to permit the renting

of land, not simply to criticise those evidences but in order to show their invalidity.

Those who permit the renting of land say that the land is an object that benefit can be derived from while it remains, and so it is permitted to rent it for a price or something similar, such as for a crop rotation, and the rule regarding goods is the same as the rule regarding prices. The invalidity of this opinion is extremely apparent, since even though land is an object which benefits could be taken from while the land remains such as through crop rotation, but the text came to explicitly state that renting land is *Haram*, so even if the definition of renting applies to it, the text came and forbade it, and for that reason it is *Haram*. So though the evidence for renting is general and encompasses any type of renting, however there is an evidence which came forbidding the renting of land which restricts it to renting anything other than land, and so the renting of land was made as an exception and it was forbidden. That is why it is *Haram*. Similar to this are the words of Allah (swt):

﴿كُلُوا مِمَّا فِي الْأَرْضِ حَلِلًا طَيِّبًا﴾

“O mankind, eat from whatever is on earth [that is] lawful and good.” (TMQ 2:168) which is general and includes everything, and the words of Allah (swt):

﴿حُرِّمَتْ عَلَيْكُمُ الْمَيْتَةُ وَالدَّمُ وَلَحْمُ أَخْنَثِir﴾

“Prohibited to you are dead animals, blood, the flesh of swine.” (TMQ 5:3) and then it is restricted by other evidences, which are made as exceptions from the generality of these things. Accordingly, the evidence they use for the permissibility of renting land has been refuted.

Those who permit the renting of land say that the evidence for this is what has been narrated about Hanthala b. Qays from Rafi' b. Khadij who said:

«حَدَّنِي عَمَّا يَقُولُ أَنَّهُمْ كَانُوا يُكْرُونَ الْأَرْضَ عَلَى عَهْدِ النَّبِيِّ ﷺ إِمَّا يَبْتَثُ عَلَى الْأَرْعَاءِ أَوْ شَيْءٍ يَسْتَشْبِهُ صَاحِبُ الْأَرْضِ، فَنَهَا النَّبِيُّ ﷺ عَنْ ذَلِكَ، فَقُلْتُ لِرَافِعٍ: فَكَيْفَ هِيَ بِالدِّينَارِ وَالدِّرْهَمِ؟ فَقَالَ رَافِعٌ: لَيْسَ بِهَا بِأَنْسٍ بِالدِّينَارِ وَالدِّرْهَمِ»

"My two uncles told me that they (i.e. the companions of the Prophet) used to rent the land in the lifetime of the Prophet for the yield on the banks of water streams (rivers) or for a portion of the yield stipulated by the owner of the land. The Prophet forbade it." I said to Rafi', "What about renting the land for Dinars and Dirhams?" He replied, "There is no harm in renting for Dinars- Dirhams." (reported by Al-Bukhari).

It is clear from the narration in Al-Bukhari that the sentence: "**There is no harm in renting for Dinars- Dirhams**" is not from the words of the Messenger of Allah ﷺ but rather it is from the words of Rafi'. This is confirmed by what has been related in the narration in Muslim from Hanthala Bin Qays Al-Ansari himself, who said:

«سَأَلْتُ رَافِعَ بْنَ حَدِيجَ عَنْ كِرَاءِ الْأَرْضِ بِالدَّهْبِ وَالْوَرْقِ، فَقَالَ: لَا بِأَنْسَ بِهِ، إِنَّمَا كَانَ النَّاسُ يُؤَاجِرُونَ عَلَى عَهْدِ النَّبِيِّ ﷺ عَلَى الْمَادِيَاتِ وَأَقْبَالِ الْجَنَدِاَوِيلِ وَأَشْيَاءِ مِنَ الزَّرِيعِ فَيَهْلِكُ هَذَا وَيَسْلِمُ هَذَا، وَيَهْلِكُ هَذَا وَيَسْلِمُ هَذَا، فَلَمْ يَكُنْ لِلنَّاسِ كِرَاءً إِلَّا هَذَا، فَلِذَلِكَ زُجَرَ عَنْهُ، فَأَمَّا شَيْءٌ مَعْلُومٌ مَضْمُونٌ فَلَا بِأَنْسَ بِهِ»

"I asked Rafi' b. Khadij about the renting of land for gold and silver, whereupon he said: There is no harm in it for the

people let out land situated near canals and at the ends of the streamlets or portion of fields. (But it so happened) that at times this was destroyed and that was saved. whereas (on other occasions) this portion was saved and the other was destroyed and thus no rent was payable to the people (who let out lands) but for this one (which was saved). It was due to this that he (the Holy Prophet) prohibited it. But if there is something definite and reliable (e. g. money), there is no harm in it”, which explains explicitly that the speaker of those words was Rafi’ and not the Prophet ﷺ, and so it is an opinion of Rafi’ related by him in the narration, and the words of Rafi’ are not a *Shari’ah* evidence, and his opinion is not a *Shari’ah* evidence. This is especially the case when there is text which directly contradicts it. So Rafi’ understood from the prohibition of the Messenger ﷺ to rent land, and the land at that time used to be rented for what was produced from it, that the renting of land with gold and silver was no problem. What supports this being the specific understanding of Rafi’ is what was mentioned in the report in Al-Bukhari from Hanthala Bin Qays Al-Ansari that he heard Rafi’ b. Khadij say:

«كُنَّا أَكْثَرَ أَهْلِ الْمَدِينَةِ مُرْدَعًا، كُنَّا نُكْرِي الْأَرْضَ بِالنَّاحِيَةِ مِنْهَا مُسْمَى لِسَيِّدِ الْأَرْضِ، قَالَ: فَمِمَّا يُصَابُ دَلِيلُ وَتَسْلِيمُ الْأَرْضِ، وَمِمَّا يُصَابُ الْأَرْضُ وَيُسْلِمُ دَلِيلُ، فَنَهَيْنَا، وَأَمَّا الْذَّهَبُ وَالْوَرْقُ فَلَمْ يَكُنْ يَوْمَئِذٍ»

“We worked on farms more than the people of Madinah. We used to rent the land at the yield of specific delimited portion of it to be given to the landlord. Sometimes the vegetation of that portion was affected by blights etc., while the rest remained safe and vice versa, so the Prophet forbade this practice. As for gold or silver, they were not used at that time (for renting the land)” (reported by Al-Bukhari). So he said:

«وَأَمَّا الْدَّهْبُ وَالْوَرْقُ فَلَمْ يَكُنْ يَوْمَئِذٍ»

“As for gold and silver, they were not used at that time”, and what was in the report of Muslim, Abu Dawud and Al-Nasa'i from Rafi' in the same narration:

«فَأَمَّا شَيْءٌ مَعْلُومٌ مَضْمُونٌ فَلَا بَأْسَ بِهِ»

“As for something that was definite and reliable, then there is no Haram in it.”, and so all of this is the understanding of Rafi', and his understanding is not considered to be a *Shari'ah* evidence, and at the same time there is evidence which contradicts his view.

And those who permit the renting of land also argue that the evidences related to the prohibition of renting land are only regarding the type of renting which took place at that time, which was that a man would rent the land for a portion of what he harvested from it, in that the one renting would cultivate a part of the land in the river valley for the owner as rent, or give a fixed amount of food, or a portion of the yields from the land. These were the types of renting which were reported in the narrations prohibiting them, and so these are the forbidden types of renting land while anything else is permitted, and for this reason it is permitted to rent land for gold and silver.

The answer to that is that the evidences which prohibit renting of land were not limited to what they used to conduct their transactions with, but rather came in a general form:

«مَنْ كَانَتْ لَهُ أَرْضٌ فَلْيَرْعَهَا أَوْ فَلْيَزِرْعَهَا أَخْاهٌ، وَلَا يُكَارِبَهَا بِشُلُّثٍ وَلَا بِرُبْعٍ وَلَا بِطَعَامٍ مُسَمًّى»

“If anyone has land, he should cultivate it, or lend it to his brother for cultivation. He should not rent it for a third or a quarter (of the produce) or for specified among of produce.”
(reported by Abu Dawud);

«نَهَى رَسُولُ اللَّهِ ﷺ عَنِ الْمُخَارَبَةِ»

“The Messenger of Allah ﷺ forbade Al-Mukharaba”
(reported by Muslim from Jabir);

«مَنْ كَانَتْ لَهُ أَرْضٌ فَلَا يَرْعُهَا أَوْ لِيَمْنَحُهَا، فَإِنْ لَمْ يَفْعَلْ فَلِيُمْسِكْ أَرْضَهُ»

“Whoever has land should cultivate it himself or give it to his (Muslim) brother gratis.” (reported by Al-Bukhari from Jabir);

«نَهَى رَسُولُ اللَّهِ ﷺ أَنْ يُؤْخَذَ لِلأَرْضِ أَجْرٌ أَوْ حَظٌ»

“The Messenger of Allah ﷺ has forbidden taking of rent or share of land.” (reported by Muslim from Jabir). The prohibition in these narrations are all general, to the point that when they asked about the types of farming, the answer of the Messenger ﷺ was not specific, but rather he ﷺ added a general rule – it is mentioned in *Sunan Al-Nasa'i* that the Messenger ﷺ prohibited renting of land, and so they said: “**in which case, we will lease it for some of the grain**”, and the Messenger ﷺ answered them by rejecting their request by saying no. Then, they presented him ﷺ with a second situation different from the first in order to get his ﷺ permission for it, so they said: “**we will lease it in exchange for figs**”, to which the Messenger ﷺ replied no, rejecting that request as well. Then they presented a third situation other than the first two to the Messenger ﷺ in order to get his ﷺ permission, saying: “**We used to lease it upon the river valley**”, and so he ﷺ replied to them for a third time rejecting what they had requested by saying no. He ﷺ did not stop at that, but rather he limited the way that the

land could be used to one of two options, saying: “***Cultivate it or give it to your brother***”. It is reported from Zuhayr Bin Rafi’ who said:

«دَعَانِي رَسُولُ اللَّهِ ﷺ قَالَ: مَا تَصْنَعُونَ بِمَحَاجِلِكُمْ؟ قُلْتُ: نُوَاجِرُهَا عَلَى الرُّبْعِ،
أَوْ عَلَى الْأَوْسُقِ مِنَ التَّمْرِ وَالشَّعِيرِ، قَالَ: لَا تَفْعَلُوا، ارْجِعُوهَا أَوْ أَنْسِكُوهَا»

“The Messenger of Allah sent for me and asked: What do you do with your cultivable lands? I said: Allah's Messenger, we rent those irrigated by canals for dry dates or barley. He said: Don't do that. Cultivate them or let them be cultivated (by others) or retain them yourself.” (agreed upon). From the two previous narrations it is clear that after the Messenger ﷺ prohibited them from what they used to do, he ﷺ ended his ﷺ words with a general text: “***Cultivate it or give it to your brother***”: “***Cultivate it yourselves, or keep it uncultivated***”, and therefore the narrations remain general and not restricted to how they used to transact, so something unrestricted is not restricted; in other words, they are not restricted to how they used to rent land when the prohibition was made, rather the prohibition remains general for all renting of land, completely, similar to the prohibition of interest which occurred when the people used to carry out usurious transactions with a high rate of interest, and all interest was prohibited not just the type of transactions they used to do. Accordingly, renting the land by anything is prohibited, whether by gold, silver or anything else. Therefore, the deduction of those who restrict the narration to the types of land rental which people used to do at the time the prohibition came has been proven false.

Those who permit the renting of land also say that the evidence for this permission is what has been extracted by Abu Dawud and Al-Nasa'i, with the wording of Al-Nasa'i:

«نَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ اللَّهُ عَلَيْهِ أَعْلَمُ بِالْحَقِيقَةِ عَنِ الْمُحَاqَلَةِ وَالْمُرَابَةِ، وَقَالَ: إِنَّمَا يَبْرُغُ ثَلَاثَةٌ: رَجُلٌ لَهُ أَرْضٌ فَهُوَ يَبْرُغُهَا، أَوْ رَجُلٌ مُنْحَى أَرْضًا فَهُوَ يَبْرُغُ مَا مُنْحَى، أَوْ رَجُلٌ اسْتَكْرَى أَرْضًا بِدَهْبٍ أَوْ فِضَّةً»

“The Messenger of Allah forbade Al-Muhaqalah (renting of land for wheat) and Al-Muzabanah, and said: ‘Only three may cultivate: A man who has land which he cultivates; a man who was given some land and cultivates what he was given; and a man who takes land on lease for gold or silver.’”

Further, what Al-Hafidh in *Al-Fateh* mistakenly attributed to Abu Dawud, while it is from Al-Nasa'i, he said: Ubayd Allah bin Sa'ad bin Ibrahim told us, my uncle told me, he said my father told us from Muhammad ibn Ikrimah from Muhammad ibn Abdur Rahman ibn Labiyyah from Sa'ad b. Abi Waqqas (ra) who said:

«كَانَ أَصْحَابُ الْمَرَاعِ يُكْرُونَ فِي رَمَانِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ اللَّهُ عَلَيْهِ مَرَاعَهُمْ بِمَا يَكُونُ عَلَى السَّاقِي مِنْ الرُّنْعِ، فَجَاءُوا رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ اللَّهُ عَلَيْهِ فَأَخْتَصَمُوا فِي بَعْضِ ذَلِكَ، فَنَهَا هُمْ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ اللَّهُ عَلَيْهِ أَنْ يُكْرُوا بِذَلِكَ وَقَالَ: أَكْرُوا بِالدَّهْبِ وَالْفِضَّةِ»

“At the time of the Messenger of Allah, landowners used to lease their arable land in return for whatever grew on the banks of the streams for irrigation. They came to the Messenger of Allah and referred a dispute concerning such matters to him, and the Messenger of Allah forbade them to lease land on such terms, and said: ‘Lease it for gold or silver.’”, and Al-Nasa'i added: “this narration was reported from Sulaiman from Raafi' who said from one of his uncles”.

They also use the narration from Abu Dawud who said: Uthman ibn Abi Shayba told us Yazeed ibn Haroon told us Ibrahi

ibn Sa'ad informed us from Muhammad bin Ikrimah bin Abdur Rahman bin Al-Harith bin Hisham from Muhammad bin Abdur Rahman bin Abi Labeeba from Sa'id ibn Musayyib from Sa'ad, he said:

«كُنَّا نُكْرِي الْأَرْضَ بِمَا عَلَى السَّوَاقِي مِنْ الزَّرْعِ وَمَا سَعَدَ بِالْمَاءِ مِنْهَا، فَنَهَا رَسُولُ اللَّهِ ﷺ عَنْ ذَلِكَ وَأَمْرَنَا أَنْ نُكْرِيَهَا بِذَهَبٍ أَوْ فِضَّةٍ»

“We used to lease land for what grew by the streamlets and for what was watered from them. The Messenger of Allah ﷺ forbade us to do that, and commanded us to lease if for gold or silver.”.

They said that these three narrations indicate the permission of renting land with gold and silver.

The reply to this is that these narrations are not suitable to be used as evidence for the permission of renting land by gold and silver.

With respect to the first narration, Al-Nasa'i explained clearly that the words of the narration which is (*Marfu'*) to the Messenger ﷺ are the prohibition of *Al-Muhaaqalah* and *Al-Muzaabanah*, and the remainder is extra/combined (*Mudraj*) from the words of Sa'id Bin Al-Musayyib. In *Sunan Al-Nasa'i* it mentions the following at the end of the narration: (*Israel differentiated it from Tariq, and so he did Irsal (Mursal) of the first part (in other words, made it from the words of the Prophet without mentioning the narrator), and made the second part from the words of Sa'id*).

The second and third narrations are not suitable for use as evidence, this is because both chains come through Muhammad Bin 'Abd Al-Rahman Bin Libi, and it is sometimes said Ibn Abi Libi, who was not deemed as trustworthy except by Ibn Hibban.

Ibn Hajar said in *Al-Taqrib*: “weak, does a lot of *Irsal* (not mentioning the name of the narrators in between)”, and Al-Dhahabi said in *Mizan Al- Tidal*: “Yahya said: his narration are not to be considered, and Al-Daraqutni said he is weak, and another said he is not strong” and in *Al-Tathyeel ‘Ala ’l-Tahtheeb book*: “Ibn abi Hatim said: Hamad from a man (in other words, Ibn Umar), who said: I asked Malik about Muhammad b. ‘Abd Al-Rahman who narrated from Sa’id Ibn Musayyib, and he said: he is not trustworthy”.

As for those who deemed the report as *Hasan* such as Al-Albani, their conclusion is not accurate, since they relied upon additional witnesses to make this result. This cannot occur if the text contradicts that which is authentic, and it mentions at the end of both narrations that the Messenger of Allah ﷺ ordered them to rent with gold and silver, and yet it was reported in Al-Bukhari from Rafi’, “**As for gold and silver they were not used at that time**”, or, in other words, they were not used in transactions for renting land, even though renting land took place and gold and silver was available and they used to transact with it in issues other than renting land, and if the Messenger ﷺ had ordered them to rent with gold and silver then it would have taken place at that time, and he would have reported that. But he didn’t report that, and over and above that he reported that in fact gold or silver was not used for renting land at that time.

Accordingly the making *Hasan* of the report through additional witnesses (other narrations) is not correct since the end of the two narrations mentions: “**and ordered us to rent it with gold and silver**”, and so this part of the two narrations remain weak and cannot be used as evidence.

Those who permit the renting of land also claim that the evidence for permitting land rental, is that the people used to do so,

as well as the *Ijma'* of the companions. As for the peoples' transactions, it is narrated that Ibn Umar used to rent his land at the time of the Messenger of Allah ﷺ, Abu Bakr (ra), ‘Uthman (ra) and part of the time in the governorship of Mu’awiyah, and Ibn Al-Arabi Al-Maliki narrated an *Ijma'* of the companions upon the permission of renting land, which indicates that renting land is permitted.

The response to this is: the fact that people transact a certain way is not a *Shari’ah* evidence for its permission, but rather the evidence must be a *Shari’ah* text either from the Book or the *Sunnah*. In addition to that, the narration regarding Ibn Umar renting his land is not suitable for an evidence since once he heard the narration (prohibiting the renting of land) he stopped doing it. This has been confirmed by two narrations from him that he stopped renting land due to it being prohibited; in the narration from Rafi’ from Ammayah it is mentioned that: “**Ibn Umar stopped renting land**”, and in the narration from Ibn Umar himself he said: “**We didn’t use to see any problem in share-cropping until we heard Rafi’ Bin Khadij say the narration**”, and the understanding from this is that he then saw a problem in share-cropping, and share-cropping is renting of land. Based upon this, the evidence regarding peoples' transactions is rejected, and the use of Ibn Umar’s actions as proof is likewise rejected. As for the *Ijma'* of the companions, which is claimed to be an *Ijma'* upon the permission of renting land, it is rather *Ijma'* upon *Al-Musaqah* (renting trees for a portion of their yields) based upon the Messenger of Allah ﷺ leasing the land of Khaybar to the Jews, and it is not an *Ijma'* upon renting land. This is because Ibn Al-‘Arabi was the one who narrated this *Ijma'*, and mentioned it in the explanation of the narration of Umar (ra) that the Prophet ﷺ did business with the people of Khaybar, and so the companions had an *Ijma'* on the permission of this renting. Therefore, this is the *Ijma'*

that he is relating, which is an *Ijma'* upon *Al-Musaqah* and not upon the renting of land, and so it cannot be used as evidence. Accordingly, it is not suitable to be used as an evidence to indicate the permission of renting land.

And those who permit renting of land claim that there is an *Ijma'* of the companions upon the permission of renting land by gold and silver as an evidence, and the author of *Al-Fateh* wrote: "*And Ibn Munthir claimed that the Messenger's companions agreed upon the renting of land by gold and silver*", and so this *Ijma'* is an evidence for the permission of renting by gold and silver.

The answer to this is that the narrations related to the prohibition of renting land invalidate this *Ijma'* since the prohibition was general, as the Prophet ﷺ said:

«مَنْ كَانَتْ لَهُ أَرْضٌ فَلْيَزْرِعْهَا، أَوْ لِيُحْرِثْهَا أَخَاهُ، وَإِلَّا فَلْيَدْعُهَا»

"*Whoever has land should cultivate it, or let his brother cultivate it, and if not, then give it up*" (reported by Muslim from Jabir), and in the narration from Muslim from Abu Hurayrah who said that the Messenger of Allah ﷺ said:

«مَنْ كَانَتْ لَهُ أَرْضٌ فَلْيَزْرِعْهَا، أَوْ لِيُمْنَحِهَا أَخَاهُ، فَإِنْ أَبِي فَلْيُمْسِكْ أَرْضَهُ»

"*Whoever has some land, then he should cultivate it, or let his brother cultivate it, and if he refuses, then his land is taken (from him)*". His ﷺ words: "*and if not, then give it up*", and: "*if he refuses, then his land is taken (from him)*", is evidence for the absence of permission for renting by gold and silver. In the same manner, the narrations limit the rule to two options at the exclusion of any others as has been previously explained: the words of the Prophet ﷺ:

«اِرْعَهَا اُوْ اَمْنَحْهَا اَخَاكَ»

“cultivate it or give it to your brother”, gave him two options to choose between, and there is no third option apart from them, and the consensus mentioned permits a third option (gold and silver), which is contradictory. This requires *Tarjeeh* (weighing up the evidences), and the narrations mentioned have a stronger chain than that of the consensus, and this is apart from the fact that consensus is only upon something that all have either agreed its permission or prohibition; as for something which has not occurred yet, then it cannot have an *Ijma'* upon it, and renting land by gold and silver was not something that the people used to do, as narrated in Bukhari from Rafi': “*As for gold and silver, they were not used at that time*”, and from Hanthala b. Qays:

«سَأَلْتُ رَافِعَ بْنَ خَدِيجَ عَنْ كِرَاءِ الْأَرْضِ بِالْذَّهَبِ وَالْوَرْقِ فَقَالَ: لَا يَأْسَ بِهِ، إِنَّمَا
كَانَ النَّاسُ يُؤَاجِرُونَ عَلَى الْمَأْذِيَانَاتِ وَأَقْبَالِ الْجَهَادِ وَأَشْيَاءِ مِنَ الرِّزْقِ،
فَيَمْلِكُ هَذَا وَيَسْلِمُ هَذَا، وَيَمْلِكُ هَذَا وَيَسْلِمُ هَذَا، فَلَمْ يَكُنْ لِلنَّاسِ كِرَاءً إِلَّا هَذَا؛ فَلِدَلِكَ زُجْرَ
عَنْهُ، فَأَمَّا شَيْءٌ مَعْلُومٌ مَصْمُونٌ فَلَا يَأْسَ بِهِ»

“I asked Rafi' b. Khadij about the renting of land for gold and silver, whereupon he said: There is no harm in it for the people let out land situated near canals and at the ends of the streamlets or portion of fields. (But it so happened) that at times this was destroyed and that was saved. whereas (on other occasions) this portion was saved and the other was destroyed and thus no rent was payable to the people (who let out lands) but for this one (which was saved). It was due to this that he (the Holy Prophet) prohibited it. But if there is something definite and reliable (e. g. money). there is no harm in it.” These two narrations indicate that renting land by gold and silver did not take place at that time, which negates the presence of an *Ijma'* upon

something that took place. The *Ijma'* of the companions is simply a method to uncover an evidence (*Kashif 'An Dalil*), and not an opinion of theirs that they agreed upon after debating and agreeing upon it. Therefore, their *Ijma'* that the rule for this action is such and such means that they heard the Messenger ﷺ say that rule, or he ﷺ was seen to do it, or he ﷺ remained silent upon it (having known of it being done), and so the companions narrate the rule without relating the evidence. This cannot occur except with something that occurred in reality, since the *Shari'ah* was legislated upon actions that were done and occurrences that took place, and not upon academic hypotheses, and therefore it is imperative that the *Ijma'* of the companions is upon something that was present. And as long as the presence of people renting land by gold and silver has been negated by authentic narrations, then this is a negation of the presence of any *Ijma'* of the companions upon it. In the same manner when Umar (ra) said to a crowd of companions from the pulpit:

«مَنْ أَخْيَا أَرْضًا مَمِيتَةً فَهِيَ لَهُ وَلَيْسَ لِمُحْشِّرٍ حَقٌّ بَعْدَ ثَلَاثَ سِنِينَ»

“whoever revives a dead land, it belongs to him, and the one who fenced it off, then has no right in it after three years (if not cultivated).” (mentioned by Abu Yusuf in *Al-Kharaj* from Salim b. ‘Abd Allah). And so he prohibited the one who fenced the land from any rights after three years, since his word: “right” is an indefinite noun in the context of a negation which is therefore general and encompasses a negation of all rights. So, if he was allowed to rent it by gold and silver, it wouldn’t have been taken from him after three years, and Umar (ra) said this and acted upon it in front of the sight and hearing of the companions and none of them refuted him and so it is a consensus.

And those who permit the renting of land say that the evidence for its permissibility is the narration from Ibn ‘Abbas who said:

«إِنَّ اللَّهَ لَمْ يَنْهِ عَنِ الْمُرَازِعَةِ، وَلَكِنَّهُ قَالَ: أَنْ يَمْنَحَ أَخْدُوكُمْ أَخَاهُ حَيْثُ لَهُ مِنْ أَنْ يَأْخُذَ شَيْئًا مَعْلُومًا»

“Allah did not forbid that, but said: One had better give the land to one's brother gratis rather than charge a certain amount for it.” (agreed upon). Ibn Maja mentioned the narration: “from Ibn Abbas, that he heard people increased renting land, and said: “Glory to Allah, the Messenger of Allah only said:

«أَلَا مَنْحَهَا أَخْدُوكُمْ أَخَاهُ، وَلَمْ يَنْهِ عَنْ كِرَائِهَا»

“One should grant it to his brother” and did not prohibit renting it”, and in another report from Ibn ‘Abbas: “The Messenger of Allah did not prohibit share-cropping but he commanded people to be kind with each other by his ﷺ words:

«مَنْ كَانَتْ لَهُ أَرْضٌ فَلْيَزْرُعْهَا، أَوْ لِيَمْنَحْهَا أَخَاهُ، فَإِنْ أَبَى فَلْيُنْسِلِكْ أَرْضَهُ»

“Whoever has some land, then he should cultivate it, or let his brother cultivate it, and if he refuses then his land is taken (from him)” (reported and authenticated by Al-Tirmidhi from Ibn ‘Abbas), and in the same manner what is reported from Thabit:

«أَنَّ رَسُولَ اللَّهِ ﷺ نَهَى عَنِ الْمُرَازِعَةِ، وَأَمَرَ بِالْمُؤَاجِرَةِ، وَقَالَ: لَا بَأْسَ بِهَا»

“The Messenger of Allah ﷺ prohibited share-cropping and ordered renting and said no Haram in it.” (as reported by Muslim). And so these narrations indicate the permission of renting.

The answer to this is that the narration of Ibn Abbas in all of its reports is information of his understanding of the words of the Messenger ﷺ, and not a report from the Messenger ﷺ. They are an explanation that he understood that the prohibition of renting land by the Messenger ﷺ was not for *Tahrim*, and so he said: “***did not prohibit it***”. And it is explicitly mentioned by him in the second report, since it is clarified he understood it from the words of the Messenger ﷺ, as he explained his understanding by mentioning the narration which he had understood from when he said: “***did not prohibit share-cropping but he commanded people to be kind with each other by his (saw) words...***”. As long as it is the understanding of Ibn ‘Abbas and not a narration from the Prophet ﷺ then it is not considered to be a proof, and cannot be used as evidence. As for the narration of Thabit who said: “***and commanded renting***”, this contradicts the other narration: “***The Messenger of Allah prohibited the leasing of land***” and the other narration: “***The Messenger of Allah prohibited any rent to be taken for land, or any share of it (crops)***” (reported by Muslim from Jabir), since his words: “***and commanded renting***” is general, encompassing all types of renting, and his words: “***the leasing of land***” and: “***any rent to be taken***” are also general; in other words, the order to rent is general and the prohibition is general, and this cannot be reconciled, since they are both general. It is not the case that one of the two is general and the other specific, or general from one angle and specific from another, and the other is general from another angle and specific from an angle other than the narration and so on such that reconciliation between the evidences could have been possible. Rather the generality of the order and prohibition are equal, so *Tarjeeh* is necessary and then the prohibition is given precedence and the narration ordering renting is rejected because if two texts contradict, then the precedence is given to the prohibition ahead of the order due to his ﷺ words:

«دَعْ مَا يَرِيُكَ إِلَى مَا لَا يَرِيُكَ»

“Give up what is doubtful to you for that which is not doubtful.” (reported by Al-Tirmidhi who said it is *Hasan Sahih*), and accordingly the use of these narrations as evidence has been negated.

Those who claim that renting land is permitted also state that the evidence for its permission is what has been reported by Abu Dawud that Zayd Bin Thabit said:

«يَغْفِرُ اللَّهُ لِرَافِعٍ بْنِ خَدِيجٍ، أَنَّا وَاللَّهِ أَعْلَمُ بِالْحَدِيثِ مِنْهُ، إِنَّمَا أَتَاهُ رَجُلًا نَّمِيَّا مُسَدَّدًا مِنَ الْأَنْصَارِ ثُمَّ اتَّقَفَا قَدْ افْتَشَلَا فَقَالَ رَسُولُ اللَّهِ ﷺ: «إِنْ كَانَ هَذَا شَأْنُكُمْ فَلَا تُكْرُوا الْمَزَارِعَ»

“May Allah forgive Raafi' Bin Khadij, I have more knowledge of Ahadith than he does. Two men who had quarreled came to the Prophet (SAW) and he said: 'If this is your situation, do not lease farms,' and what Raft' bin Khadij heard was 'Do not lease farms'”.

In other words, Zayd b. Thabit said he knew more about that (meaning renting land) than Rafi', and that when the Prophet ﷺ heard two men had fought so he ﷺ said:

«إِنْ كَانَ هَذَا شَأْنُكُمْ فَلَا تُكْرُوا الْمَزَارِعَ»

“'If this is your situation, do not lease farms,' and what Rafi' bin khadij heard was 'Do not lease farms.'” And Al-Bukhari reported from Amrf Bin Dinar who said: “I said to Tawus, if you left behind Al-Mukhabara (share-cropping) since they claim that the Prophet ﷺ prohibited it. He said: More knowledgeable than

them (intending Ibn ‘Abbas) told me that the Prophet ﷺ did not prohibit it and rather he said:

«أَنْ يَمْنَعَ أَحَدُكُمْ أَخَاهُ خَيْرٌ لَّهُ مِنْ أَنْ يَأْخُذَ عَنِيهَا خَرَاجًا مَعْلُومًا»

“That one of you grant it to his brother is better (for him) than to take a fixed Kharaj upon it”, and Al-Kharaj linguistically means leasing of the land. So these two narrations indicate the permission of renting.

The reply to this is that the narration of Zayd does not indicate the permission of renting land, but rather it indicates its prohibition, and as for the understanding derived from the condition in his words: “**If this is your situation**”, this is voided by the narrations which comprehensively prohibit renting for farming, and also it is voided since it falls under the usual situation – meaning that renting in the manner that they used to would normally lead to disputes and differences since some land is more fertile than other. This is similar to the voiding of the condition in His (swt) words:

﴿وَلَا تُكْرِهُوا فَتِيَّبُوكُمْ عَلَى الْبِغَاءِ إِنَّ أَرْدَنَ تَحْصُنَا﴾

“And do not compel your slave girls to prostitution, if they desire chastity.” (TMQ 24:33), so this condition is voided as it falls under the usual situation – most of the time their maids hated prostitution, and so this understanding, or this understanding derived from the condition, is voided since it was merely a description of what was the case in usual circumstances (that a woman would hate to be forced into prostitution), and it also voided the texts which prohibited fornication generally and were not limited.

As for the second narration from ‘Amru b. Dinar, likewise it does not mean: “**permission to grant and permission to take rent,**

but granting is better”; rather it prohibits taking the rent. This is because the sentence: “**to grant his brother is better for him than to take a fixed Kharaj upon it**” is an informative sentence which conveys a request, in other words, it is as though he ﷺ said: “**Grant your brother and don't take Kharaj from him**”, and so it contains a request to grant, in other words, give, without recompense, and prohibiting taking *Kharaj* or in other words, rent. It requires an indication to explain the type of prohibition: “*request to leave*”, and the indications are in other narrations which convey that it is a decisive request since they prohibit the taking of rent comprehensively such as his words ﷺ:

«مَنْ كَانَتْ لَهُ أَرْضٌ فَلْيَرْعَهَا أَوْ لِيُرِعِّهَا أَخَاهُ، وَلَا يُكَارِبَهَا بِشُلُّثٍ وَلَا بِرُبْعٍ وَلَا بِطَعَامٍ مُسَمَّى»

“*Whoever has land, let him cultivate it (himself) or give it to his brother to cultivate, and not lease it in return for one-third or one-quarter of the yield nor a specified amount of food (produce).*” (reported by Abu Dawud). And:

«مَنْ كَانَتْ لَهُ أَرْضٌ فَلْيَرْعَهَا أَوْ لِيُمْنَحِّهَا، فَإِنْ مَمْ قَعَنَ فَلْيُمْسِكْ أَرْضَهُ»

“*Whoever has land should cultivate it himself or give it to his (Muslim) brother gratis; otherwise he should keep it uncultivated.*” And from Rafi’:

«أَنَّ النَّبِيَّ ﷺ نَهَىٰ عَنْ كِرَاءِ الْمَزَارِعِ»

“*The Messenger of Allah prohibited renting of farms*” (agreed upon). And:

«نَهَىٰ رَسُولُ اللَّهِ ﷺ أَنْ يُؤْخَذَ لِلأَرْضِ أَجْزُرٌ أَوْ حَظْ»

“The Messenger of Allah ﷺ forbade the land to be used for a rent or share of the crop” (reported by Muslim from Jabir). And it is reported that ‘Abd Allah b. Umar met Rafi’ b. Khadidh and asked him and so he replied: I heard my uncles, and they were from those who saw Badr, say:

«أَنَّ رَسُولَ اللَّهِ نَهَىٰ عَنْ كِرَاءِ الْأَرْضِ»

“The Messenger of Allah prohibited renting land” (by Muslim).

Those who claim that renting land is permitted say that the proof for its permissibility is what is reported by Ibn Umar:

«أَنَّ رَسُولَ اللَّهِ عَالِمًا أَهْلَنَ خَيْرٍ بِشَطْرٍ مَا يَخْرُجُ مِنْهَا مِنْ شَرٍّ أَوْ زَرْعٍ»

“The Messenger of Allah ﷺ contracted the people of Khaybar over half of what was produced of fruit or crops”, and Abu Ja’far said:

«عَامِلٌ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ اللَّهُ عَلَيْهِ وَسَلَّمَ أَهْلُ خَيْرٍ بِالشَّطَرِ، ثُمَّ أَبُو بَكْرٍ، ثُمَّ عُمَرُ وَعُثْمَانَ وَعَلَيْهِ، ثُمَّ أَهْلُو هُمْ، إِلَى يَوْمٍ يُعْطَوْنَ الشُّتُّ وَالرُّبَعَةَ»

“The Messenger of Allah ﷺ contracted the people of Khaybar over half, and then Abu Bakr (did the same), and then Umar, and then Uthman and Ali and then until today they give a third and a quarter” (mentioned by Ibn Qudamah in *Al-Mughni* and he said it is *Sahih Mashhur*). And Al-Bukhari reported from Ibn Umar:

«أَنَّ النَّبِيَّ ﷺ عَامِلٌ حَبِيرٌ بِشَطْرٍ مَا يَحْمِجُ مِنْهَا مِنْ تَمْرٍ أَوْ زَرْعٍ، فَكَانَ يُعْطِي أَزْوَاجَهُ مِائَةً وَسَقْ تَمَانُونَ وَسَقْ تَمْرٍ وَعِشْرُونَ وَسَقْ شَعِيرٍ، فَقَسَّمَ عُمُرَ حَبِيرٍ، فَحَبِيرٌ أَزْوَاجُ النَّبِيِّ

الله أَنْ يُقْطِعَ لَهُنَّ مِنَ الْمَاءِ وَالْأَرْضِ أَوْ يُمْضِي لَهُنَّ؟ فَعِنْهُنَّ مَنْ اخْتَارَ الْأَرْضَ، وَمِنْهُنَّ مَنْ اخْتَارَ الْوَسْقَ، وَكَانَتْ عَائِشَةُ اخْتَارَتِ الْأَرْضَ»

“The Prophet ﷺ contracted the people of Khaybar upon a half of what they produced from the land, in terms of crops or fruits, so he used to give his wives one hundred loads, eighty of dates, and twenty of barley, then Umar divided Khaybar and gave the wives of the Prophet ﷺ the choice to be given land and water from it, or to continue taking the loads, and so some of them chose the land, and others the loads, and Aisha chose land”. Therefore, this narration indicates the permission of renting land for a part of its yields, and so indicates the permissibility of renting land absolutely.

The reply to this is that the land of Khaybar was wooded land irrigated by water, and between the trees was a flat land whose area was less than that of the area of the wooded land. It was this land that was cultivated, and this is supported by what was mentioned in some of the narrations:

«أَنَّ النَّبِيَّ ﷺ عَامَلَ أَهْلَنَ خَيْرٍ بِشَطْرٍ مَا يَخْرُجُ مِنَ النَّخْلِ وَالشَّجَرِ»

“The Prophet ﷺ contracted the people of Khaybar over what they produced from the palm trees and trees.” (reported by Al-Daraqutni from Ibn Umar). And in the narration of Ibn Abbas:

"أَرْضُهَا وَنَخْلُهَا"

“its land and its palm trees.” Accordingly, the reality of what the Messenger ﷺ did when he ﷺ leased Khaybar is that it was *Musaqah* (renting trees for a portion of their yields) and not share-cropping, or in other words, renting of a wooded land and not the rental of the land alone, rather the rental of trees and the land with

them, which is *Musaqah*, and this is permitted without any difference. It is permitted to rent a tree for a fixed portion of its fruits in exchange for someone watering and harvesting them, and the land is rented since the tree is on the land, on the condition that there is more land with trees than empty land in order that the rental be for the trees and not the land. So this is *Musaqah* which is permitted, and what is forbidden is the renting of land and not the *Musaqah*. A detailed look at the narration in Bukhari reveals that the land was mainly full of trees, and the land with trees was greater than the empty land, and there was water there to irrigate the trees, which means it was *Musaqah*. Look at the words in the narration: "***so he used to give his wives one hundred loads, eighty of dates, and twenty of barley***", and his words: "***to be given land and water from it***", which indicates that the land of Khaybar used to have trees, and that its rental was on the basis of *Musaqah*, and not share-cropping nor renting of the land.

Based upon that, the narration cannot be used as an evidence for the permissibility of renting land, and therefore its use is negated.

In summary, therefore, the prohibition of renting is an issue which is as clear as can be. And accordingly the evidence for the article has been proven with the most prominent manner of deduction.

As for *Musaqah* – the renting of trees for a portion of their fruits or the renting of trees with the land they are on for a portion of the fruit and crops, as long as there are more trees than empty land - the proof for this is the *Shari'ah* meaning of *Musaqah* and the permission for *Musaqah* in the narrations reported regarding it. Al-Bukhari reported from Abu Hurayrah who said:

«قَالَ الْأَنْصَارُ لِلنَّبِيِّ ﷺ: أَفْسِمْ بَيْتَنَا وَبَيْنَ إِخْوَانِنَا التَّحْجِيلَ، قَالَ: لَا، فَقَالُوا: تَكْفُونَا الْمُؤْنَةُ وَنَشْرُكُكُمْ فِي الشَّمْرَةِ، قَالُوا: سَعْنَا وَأَطْعَنَا»

"The Ansar said to the Prophet ﷺ : distribute the date palm trees between us and our emigrant brothers. He replied, "No." The Ansar said (to the emigrants)"look after the trees (water and watch them) and share the fruits with us." The emigrants said: "We listen and obey"". And Al-Bukhari extracted through Nafi' that 'Abd Allah b. Umar informed him:

«أَنَّ النَّبِيَّ ﷺ عَامَلَ حَيْبَرَ بِشَطْرٍ مَا يَخْرُجُ مِنْهَا مِنْ تَمْرٍ أَوْ رَزِّ، فَكَانَ يُعْطِي أَرْوَاجَهُ مِائَةً وَسَقَيَ تَمَانُونَ وَسَقَ تَمْرَ وَعِشْرُونَ وَسَقَ شَعِيرٍ، فَقَسَمَ عُمُرَ حَيْبَرَ فَحَيْبَرَ أَرْوَاجَ النَّبِيِّ ﷺ أَنْ يُقْطِعَ لَهُنَّ مِنَ الْمَاءِ وَالْأَرْضِ أَوْ يُعْظِي لَهُنَّ؟ فَمِنْهُنَّ مَنْ اخْتَارَ الْأَرْضَ، وَمِنْهُنَّ مَنْ اخْتَارَ الْوَسْقَ، وَكَانَتْ عَائِشَةُ اخْتَارَتِ الْأَرْضَ»

"The Prophet ﷺ contracted the people of Khaybar upon a half of what they produced from the land, in terms of crops or fruits, so he used to give his wives one hundred loads, eighty of dates, and twenty of barley, then Umar divided Khaybar and gave the wives of the Prophet ﷺ the choice to be given land and water from it, or to continue taking the loads, and so some of them chose the land, and others the loads, and Aisha chose land", and Muslim and Abu Dawud and Al-Nasa'i reported:

«أَنَّ رَسُولَ اللَّهِ ﷺ دَفَعَ إِلَى يَهُودِ حَيْبَرَ تَحْلَّ حَيْبَرَ وَأَرْضَهَا عَلَى أَنْ يَعْتَمِلُوهَا مِنْ أَمْوَالِهِمْ، وَلَرَسُولُ اللَّهِ ﷺ شَطْرٌ ثَمَرَهَا»

"The Messenger of Allah ﷺ gave the Jews the date palms and land of Khaybar, for them to work upon it with their wealth,

and the Messenger of Allah ﷺ would have half of its fruits". Ahmad and Ibn Maja reported from Ibn 'Abbas:

«أَنَّ رَسُولَ اللَّهِ ﷺ دَفَعَ خَيْرَ أَرْضَهَا وَخَلَهَا مُقَاسَةً عَلَى النِّصْفِ»

"The Prophet ﷺ gave Khaybar's land and date palms as a division over half". These narrations indicate that *Musaqah* is the renting of trees alone for part of their fruits, as is apparent from the narration of Abu Hurayrah regarding the actions of the Ansar. They also indicate that *Musaqah* is the renting of trees with land for a portion of the fruits of the trees and the yield of the land, as is apparent from the narration of Nafi' from 'Abd Allah b. Umar:

«عَامَلَ خَيْرَ بِشَطْرٍ مَا يَجْثُجُ مِنْهَا مِنْ ثَمَرٍ أَوْ زَنْبُعٍ»

"contracted the people of Khaybar upon a half of what they produced from the land, in terms of crops or fruits", and likewise from the narration of Muslim, Abu Dawud and Al-Nasa'i: *"date palms and land of Khaybar"* and the narration of Ibn Abbas: *"Khaybar's land and date palms"*. So they indicate that the renting is either of the trees alone, or the trees and the land with them. Similarly they indicate that the land should be less than the trees, as is clear from the narration of Nafi' from 'Abd Allah b. Umar:

«مِائَةً وَسُقْيٌ سَمَانُونَ وَسُقْيٌ تَمْرٌ وَعِشْرُونَ وَسُقْيٌ شَعِيرٌ»

"hundred loads, eighty of dates, and twenty of barley". Accordingly it is confirmed that the reality of *Musaqah* is renting the trees for a portion of its fruits, or renting the trees and land for a portion of the fruit and the crops, as long as the trees are more than the land. Additionally these narrations are evidence for the permissibility of *Musaqah*.

Article 136

Everyone that owns land is compelled to use it, and those that require financial help are given money from the *Bayt Al-Mal* to enable them to utilise their land. If anyone neglects utilising the land for three years continuously, it is taken from them and given to someone else.

The evidence is what Abu Yusuf reported in *Al-Kharaj* from Salim b. ‘Abd Allah that Umar b. Al-Khattab (ra) said from the pulpit: “*whoever revives a dead land, it belongs to him, and the one who fenced it off has no right in it after three years (if not cultivated).*” Umar (ra) said this in the sight and full hearing of the companions, and none of them rebuked him and so it is a consensus. This is explicit evidence that if someone revives a dead land, or places stones or anything which shows his possession of it upon it, then he takes possession of it. However, if he does not utilise the land for a period of three consecutive years then it is taken from him. The one who revived it and the one who fenced it off are the same from the angle of ownership, and from the angle of it being taken away from them. It cannot be said that the issue of ownership is restricted to the one who revives: “*whoever revives*”, and that the issue of dispossessing it is restricted to the one who fenced it off: “*and the one who fenced it off has no...*”, with the understanding that ownership is for the reviver, and taking the land away if it was neglected is restricted to the one who fenced it off and excludes the reviver. This is because the wording is from the metaphorical style of deletion (*Hadithf*), and so the one who fenced also falls under ownership, and the reviver under the ruling of dispossession: as if Umar (ra) said: “whoever revived a dead land then it is for him, and he has no right to it after three years, and

whoever fenced a dead land then it is for him and he has no right to it after three years”.

Though Umar’s (ra) words mentioned dead land that is taken into an individual’s possession through reviving it or fencing it off, in other words, by placing his hand upon it, and that if he neglects it for three years then it is taken from his possession, there are other texts which are reported about land which is not revived and fenced, and not dead, rather as part of a cultivated land that was granted to people. It is reported from Yahya b. Adam through the chain of ‘Amru b. Shu’ayb who said:

«أَقْطَعَ رَسُولُ اللَّهِ ﷺ تَاسِاً مِنْ مُزِيْنَةَ أَوْ حُهَيْنَةَ أَرْضًا فَعَطَلَوْهَا، فَجَاءَ قَوْمٌ فَأَخْيَرُوهَا، فَقَالَ عُمَرُ: لَئِنْ كَانَتْ قَطِيعَةً مِنِّي أَوْ مِنْ أَبِي بَكْرٍ لَرَدَدْتُهَا، وَلَكِنْ مِنْ رَسُولِ اللَّهِ ﷺ»

“The Prophet ﷺ assigned land to some people from Muzaynah or Juhaynah as a fief, and they neglected it. Other people came and cultivated it. Umar said: If the land was granted by me or by Abu Bakr, I would have taken it back from them. But it was granted by the Messenger of Allah ﷺ”.

What is meant is that more than three years had passed, or in other words, if it had been granted from the time of Abu Bakr (ra), three years would not have passed yet, and similarly if it had been granted in the time of Umar (ra), and so Umar (ra) would have returned it to the one it had been granted to. However, it was the Prophet ﷺ who granted it, and so more than three years had passed and so it was not possible to return it, rather Umar (ra) confirmed its ownership to the ones who had revived it. And it is apparent from the narration that it occurred more than a year after Umar (ra) took the leadership, and it was land granted from the time of the Messenger of Allah ﷺ, in other words, it was granted more than

three years earlier, and for that reason Umar (ra) did not return it; it is also clear that the event was regarding land that had been granted and was not revived or fenced land.

Abu ‘Ubayd reported in the book of *Al-Amwal* from Bilal Ibn Al-Harith Al-Muzni, that:

«أَنَّ رَسُولَ اللَّهِ ﷺ أَفْطَعَهُ الْعَقِيقَ أَجْمَعَ، قَالَ: فَلَمَّا كَانَ زَمَانُ عُمَرَ قَالَ لِبِلَالٍ: إِنَّ رَسُولَ اللَّهِ ﷺ لَمْ يُقْطِعْكَ لِتَحْجِرَهُ عَلَى النَّاسِ، إِنَّمَا أَفْطَعَكَ لِتَعْمَلَ، فَخُذْ مِنْهَا مَا قَدِيرْتَ عَلَى عِمَارَتِهِ وَرُدِّ الْبَاقِي»

“The Messenger of Allah ﷺ had assigned him all of Al-Aqiq as a fief. He said that during the time of Umar, he (Umar) said to Bilal, ‘The Messenger of Allah ﷺ did not grant you the place to fence it away from the people but rather to use it. So take of it as much as you can afford and return the rest’. It is clear from this that neglect of the land due to the lack of capability to utilise it is a cause for taking the land away, as understood and acted upon by Umar (ra), and the limit of neglect before it is mandatory to take the land is three years as mentioned in the previous words of Umar (ra).

It cannot be said that this is only regarding land that has been granted, since the issue was not a question nor an event that occurred which the text was specific to, rather it is general, and is general for all possessed land. Therefore, the cause for taking away the possession of land if it was neglected is not because it was land that was originally granted but rather because it was neglected. This is confirmed by the words of Umar (ra): “*whoever neglected a land for three years and did not build upon it, and then someone else came and built upon it then it is theirs*” (reported by Yayha b. Adam in *Al-Kharaj* and Ibn Zanjawi in *Al-Amwal* from ‘Amr b. Shu’ayb), and his word: “*a land*” is an unrestricted term which

encompasses all types of possessed land, irrespective of whether it was dead and then taken into ownership through revival and fencing, or if it was built upon and taken into ownership by being granted or inheritance or buying or a gift...the rule is applied to it – it is taken if it is not used for three years.

This indicates that the land which was possessed by an individual, irrespective of whether that was by revival, fencing, granting, or purchasing is taken away from the owner if he left it unutilised for three consecutive years, as was indicated by the action of Umar (ra) in the incident with Amrf Bin Shu'ayb and by his words: "**whoever neglected a land**", and by the incident of Bilal, and it is not known that any of the companions rebuked him over that even though it is from the things that are rebukable, because it is forcefully taking a cultivated land from its owner without giving anything in exchange, and the one taking it is the *Khalifah*; it is accordingly *Ijma'* of the companions. This is because the *Ijma' Sukuti* (silent *Ijma'*/*Ijma'* of consent) is when one of the companions does an action that would normally be rebuked in front of a group of them, and none of them rebuke it, and so it is a *Shari'ah* evidence. Based upon this the cultivated land that is owned by an individual, is taken from them by compulsion without exchange if they left it uncultivated for a period of three consecutive years.

From this, it is clear that the rule encompasses all land, regardless of whether it was possessed through revival, grant, inheritance, purchase or anything else – every land which is neglected for three years is compulsorily taken back by the State from its owner without any compensation.

The issue of being three consecutive years is understood from the text, which applied to taking the land and to its neglect for three years. He said: "**Whoever neglected a land for three years**",

and so the issue of neglect applies after three years, and it is understood from this that the three years are consecutive. This is confirmed without any lack of clarity by his words: “***and the one who fenced it off has no right to it after three years***”, and so the negation applies: “after three years”, and it is not said: “after three” if they were not consecutive, and would only be used if they were consecutive following one after the other.

As for giving the farmers help from *Bayt Al-Mal* (treasury) to enable them to cultivate their land, its evidence is what Umar (ra) did in Iraq. When he conquered Iraq he left the land in the hands of its inhabitants, and did not divide it amongst the fighters even though it was part of the booty. He gave the farmers money from the *Bayt Al-Mal* (treasury) in order to strengthen them to cultivate their land even though they had not yet embraced Islam, even though farmers in their characteristic as farmers are not from those who deserve anything from *Bayt Al-Mal* (treasury) since as long as they own land they cannot be counted as being poor. Anything similar to these two issues would normally be rebuked due to their contradiction with the rules regarding war booty and the rules regarding *Bayt Al-Mal* (treasury). As for the first issue which is leaving the land which was taken as booty with those who cultivated it, and not dividing it amongst the fighters, there were companions who rebuked Umar (ra), and a discussion took place between them. As for the second issue, which was giving the farmers in Iraq money from the *Bayt Al-Mal* (treasury) in order for them to cultivate their land, none of the companions rebuked Umar (ra), and so it is an *Ijma'* (consensus) upon the permission of giving farmers what is required from *Bayt Al-Mal* (treasury) to enable them to cultivate their land.

These are all the evidences for this article.

Article 137

There are three categories of Public Ownership:

- a. Public utilities, such as the open spaces in the towns.**
- b. Vast mineral resources, like oil fields.**
- c. Things which, by their nature, preclude ownership by individuals, such as rivers.**

The evidence of the article is the evidence for article 129, and so the evidence for clause: “c” is the affirmation of the Messenger ﷺ upon the people sharing the ownership of the public pathways, and his ﷺ words:

«مَنْ مُنَاحٌ مِّنْ سَيْقٍ»

“*Mina is a resting place for whoever arrives first*” reported by Al-Tirmidhi from Aisha(ra), and he said it is *Hasan Sahih*, and Ibn Khuzaymah who authenticated it; in other words, Mina, which is the famous place in the Peninsula, is a public property for all the people. So whoever gets there first and rests there, they have the right to it.

As for clause: “b”, its evidence is what was reported from ‘Amru b. Qays from his father from Abyad bin Hammal who said:

«اسْتَعْطَعْتُ رَسُولَ اللَّهِ ﷺ مَعْدِنَ الْمَلْحِ بِمَارِبَ فَأَفْطَعْنِيهِ، فَقِيلَ: يَا رَسُولَ اللَّهِ، إِنَّهُ يُمْتَلِّهُ الْمَاءُ الْعَدْدُ - يَعْنِي أَنَّهُ لَا يَنْقُطُ - فَقَالَ رَسُولُ اللَّهِ ﷺ: فَلَا إِذْنُ»

“*I asked the Messenger of Allah ﷺ to assign me a salt laden land as a fief and so he granted it to me. It was said: O Messenger of Allah ﷺ, it is comparable to a countless water – in other words, it does not deplete – and so the Messenger of Allah*

ﷺ said: “In such a case: no”” (reported by Al-Nasa’i), and the groundwater is that which is not depleted, and so the salt laden land was compared to the groundwater which is not depleted. The intention here is not the salt but rather the minerals, the evidence being that when he ﷺ knew that it was non-depleting he ﷺ prohibited it, though he ﷺ initially knew that it was salt, and granted the land initially, and so the prohibition is due to it being a vast mineral resource. Abu ‘Ubayd said:

«فَلَمَّا تَبَيَّنَ لِلنَّبِيِّ ﷺ أَنَّهُ مَاءً عَدْ أَرْجَعَهُ مِنْهُ، لَأَنَّ سُنَّةَ رَسُولِ اللَّهِ ﷺ فِي الْكَلَاءِ وَالنَّارِ وَالْمَاءِ أَنَّ النَّاسَ جَمِيعًا فِيهِ شُرَكَاءُ، فَكَرِهَ أَنْ يَجْعَلَهُ لِرَجُلٍ يَخْوُرُهُ دُونَ سِوَادٍ»

“When the Prophet ﷺ realised it included ground water (does not deplete), he revoked it, it is the Sunnah of the Messenger of Allah ﷺ in relation to pasture, fire and water, to make all the people partners in their possession. So he disliked limiting possession to one person at the exclusion of others”. Accordingly, every mineral which is non-depleting, i.e. its size is not evaluated as a small quantity, is considered to be a public property. Had it been limited to a small amount then it is not considered to be a public property, as evidenced by the narration.

As for clause: “a”, its evidence is the words reported by one of the companions of the Prophet ﷺ Abu Kharras who said: the Messenger ﷺ said:

«الْمُسْلِمُونَ شُرَكَاءٌ فِي ثَلَاثٍ: الْمَاءُ وَالْكَلَاءُ وَالنَّارُ»

“Muslims have common share in three: water, pastures and fire” (reported by Ahmad), and his ﷺ words:

«ثَلَاثٌ لَا يُنْعَنُ: الْمَاءُ وَالْكَلَاءُ وَالنَّارُ»

“Three can not be denied (to anyone): water, fire and pastures” (reported by Ibn Maja from Abu Hurayrah). This narration has an *Illah* that its prevention is because they are from the public utilities. So the Messenger ﷺ permitted individual ownership of water in Al-Ta’if and Khaybar, and they owned it at the expense of others in order to irrigate their crops and gardens, and so if there was absolute partnership in water, he ﷺ would not have allowed individuals to own it. Therefore, from the words of the Messenger ﷺ **Muslims have common share in three: water...**”, and: **“three are not denied”** along with his ﷺ permission for individuals to own water, an *Illah* can be deduced that the partnership in water, pastures and fire, is due to the fact that they are public utilities that the public cannot live without, and so anything that is considered to be a public utility such as the open space in the towns, the areas for wood and the grazing pastures are all public property.

This is the evidence for public ownership.

As for the fact that these three alone constitute publicly owned property, this is from examination. Through the examination of the evidences regarding public ownership, it was found that they were limited to these categories, and so subsequently the evidence for this article has been made clear.

Article 138

Factories by their nature are private property. However, they follow the rule of the product that they are producing. If the product is private property then the factory is considered to be private property, such as textile factories. If the product is public property then the factory is considered public property, such as factories for iron ore production.

This article has two parts: Firstly, the origin is that factories are owned by individuals, and secondly, that the factory takes the rule of the product that it produces.

As for the first part, its evidence is that:

«أَنَّ النَّبِيَّ ﷺ أَصْطَعَ خَاتَمًا»

“*the Messenger ﷺ had a ring made for him*” reported by Al-Bukhari from ‘Abdullah b. Umar, and:

«أَنَّهُ ﷺ اسْتَحْصَنَعَ الْمِنْزَرَ»

“*had a pulpit made*” as reported by Al-Bukhari from Sahl b. Sa’d Al-Sa’idi, and they were produced by individuals who personally owned the factory. Additionally, people used to have things made for them at the time of the Messenger ﷺ and he ﷺ remained quiet over it, to the point that some of them used to make weapons, like Khubab who used to make swords in *Jahiliyyah* (the era of ignorance before Islam) and continued after he embraced Islam, and his story is mentioned in the *Sirah* of Ibn Hisham with Al-‘As Bin Wa’il Al-Sahmi when he bought a sword from Khubab. When Khubab came to Al-‘As to confirm the price he joked with him saying: I’ll pay the price for it in Paradise. This indicates that he ﷺ affirmed individual ownership of factories, irrespective of whether they were weapon, mineral or carpentry factories or anything else. It is not reported that he ﷺ prohibited the ownership of factories, and there is no text which states that factories are public property, in the same way that there is no text which states that factories belong to the State. Therefore, the evidence that factories can be private property remains general.

This is the evidence for the first part. As for the second, its evidence is the rule:

«إِنَّ الْمُصْنَعَ يَأْخُذُ حَكْمَ مَا يَنْتَجُ»

“*The factory takes the rule of what it produces*”, and this rule is deduced from the Prophetic narration; it is reported that the Messenger ﷺ said:

«لَعْنَ اللَّهِ شَارِبَ الْخَمْرِ وَعَاصِرَهَا وَمُعْتَصِرَهَا»

“*Allah has cursed wine, its drinker, its server, its seller, its buyer, its presser*” which is part of a narration in Abu Dawud from Ibn Umar that is authenticated by Ibn Al-Sakan, and the complete narration is:

«لَعْنَ اللَّهِ الْخَمْرَ وَشَارِبَهَا وَسَاقِيَهَا وَبَائِغِهَا وَمُبْتَاعِهَا وَعَاصِرَهَا وَمُعْتَصِرَهَا وَخَامِلَهَا وَالْمَحْمُولَةِ إِلَيْهِ»

“*Allah has cursed wine, its drinker, its server, its seller, its buyer, its presser, the one for whom it is pressed, the one who conveys it, and the one to whom it is conveyed.*”, and so the prohibition of pressing wine is not a prohibition of pressing itself, but rather it is a prohibition of pressing wine specifically. Therefore, pressing is not forbidden (*Haram*), but rather it is the pressing to produce alcohol which is forbidden. So pressing is forbidden due to the forbiddance of alcohol, and so it took the rule of the thing that it was being pressed for, and so the prohibition applies to pressing, or in other words, the process of pressing, and so it applies to the instruments used for pressing. Therefore, the production takes the rule of the product that it is producing, and the factory takes the rule of the product that it manufactures, and this is the evidence that the factory takes the rule of what it produces, in

other words, it is the evidence for this rule, since the forbiddance of the factory came from the forbiddance of the product that it produces. The narration is not evidence that factories are public property; rather it is only evidence for the factory taking the rule of the product that it produces. This is the evidence for the second part; in other words, the rule deduced from the narration is the evidence for this part.

Factories are, therefore, judged upon this basis; so if the product they produce is not from the materials which are counted as public property, then these products are owned individually, such as textile factories, because the Messenger ﷺ affirmed the production of swords, clothes and shoes which are all things that are individually owned. If the factories were producing materials which are counted as public property, such as factories to extract oil, and steel, then they are considered to be public and not private property. This is because when the Messenger ﷺ prohibited the production of alcohol, he gave the factory the rule of the material it produces, which is the evidence for this article.

Article 139

The State is not permitted to transfer private property into public property, since public property is confirmed by the nature and characteristic of wealth and not by the opinion of the State.

The evidence are the words from the agreed upon narration of the Messenger ﷺ through Abu Bakra:

«إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ عَلَيْكُمْ حَرَامٌ كُحْرَمَةٌ يَوْمَكُمْ هَذَا فِي بَلَدِكُمْ هَذَا
فِي شَهْرِكُمْ هَذَا...»

“No doubt! Your blood, your properties, and your honor are sacred to one another like the sanctity of this day of yours, in this (sacred) town (Mecca) of yours, in this month of yours”, which is general and encompasses every person, and so it is forbidden to take the wealth of any individual, whether Muslim or not, except for a legislated reason. Therefore, it is forbidden for the State to take the wealth of any individual except for a *Shari’ah* reason. Accordingly, it is forbidden for the State to take the wealth of any individual into its possession on the grounds of benefit, or to make it public property for the benefit of the *Ummah*, since the narration forbade that and benefit does not make it permitted, as its permission would require a *Shari’ah* evidence. It cannot be said that the *Imam* can do that as part of governing the interests of the *Ummah* since he has the right to manage the affairs. This is because the management of the affairs is the undertaking of the interests of the people according to the *Shari’ah* rules, and not the undertaking of the peoples’ interests according to the opinion of the *Khalifah*, and so the *Khalifah* has no power at all to permit whatever Allah (swt) forbade, and if he did so the action would be considered an injustice which he would be taken to court for, and the wealth would be returned to its owner.

Based upon this, what is called nationalisation is not from the *Shari’ah* in any shape or form, since if a property had the nature and characteristic of public property then it would be obligatory upon the State to make it part of the public property, and it would have no choice in that, and so this would not be considered nationalisation but rather the nature and characteristic of the property meant that it was in reality part of the public property, and

it would be forbidden for the State to allow it to be privately owned. As for if the property was owned by an individual and did not have the characteristic or nature of public property, then it would be forbidden for the State to nationalise it, and if it did so it would be taken to court and the property would be returned to its owner. This is since the Messenger of Allah ﷺ took the salted land back from Abyad Bin Hammal after he ﷺ had granted it to him, once it became apparent that it was not depleted.

Article 140

Every individual from the *Ummah* has the right to utilise anything from public property, and it is not allowed for the State to permit someone to individually possess or utilise it.

Ummah in this article is the citizens in *Dar Al-Islam*, or in other words, all those who carry the citizenship of the State, irrespective of whether they were Muslim or *Dhimmi* (non-Muslims), and the State is compelled to take care of them all the time, which includes providing the basic needs for them. This is in accordance with the *Shari'ah* rules they are subject to. Amongst them is that every individual from the subjects has the right to utilise anything from the public property, and the *Dhimmi* and Muslim have the same rights to utilise the public facilities.

It cannot be said that the narration:

«الْمُسْلِمُونَ شُرَكَاءٌ فِي ثَلَاثٍ»

“**Muslims have common share in three**” means that the public property is for the Muslims alone, rather this narration and similarly the narration:

«النَّاسُ شُرَكَاءُ...»

“*People have common share (partners)*” are specified by the narration of Muslim through Buraydah which mentions:

«تُمْ ادْعُهُمْ إِلَى التَّحْوُلِ مِنْ دَارِهِمْ إِلَى دَارِ الْمُهَاجِرِينَ وَأَخِزْهُمْ أَنَّهُمْ إِنْ فَعَلُوا ذَلِكَ فَلَهُمْ مَا لِلْمُهَاجِرِينَ وَعَلَيْهِمْ مَا عَلَى الْمُهَاجِرِينَ»

“*Then summon them to leave their territory and transfer to the abode of the Emigrants (Al-Muhajireen) and tell them that if they do so, they will have the same rights and responsibilities as the Emigrants (Al-Muhajireen).*” and the *Dar Al-Muhajireen* is the *Dar Al-Islam*, and so this text limits the rights of citizenship to those who migrate to the *Dar Al-Islam*, or in other words, they carry the citizenship of *Dar Al-Islam*. Therefore, this does not encompass all the Muslims in the world but rather only those in *Dar Al-Islam*, and in the same way, non-Muslims who live in *Dar Al-Islam* and carry citizenship are not exempted, because the narration of Buraydah makes enjoyment of the right of citizenship conditional to migration to *Dar Al-Islam*. Accordingly, the Muslim in *Dar Al-Islam*, and the *Dhimmī* who lives in *Dar Al-Islam* and carries its citizenship fall under the application of this article.

This is for the citizens in *Dar Al-Islam*; they can utilise from the public property, and none of them should be prevented from doing so irrespective of whether they were Muslims or *Dhimmis*.

The issue of the Muslim subjects utilising the public property is clear.

As for the *Dhimmī*, there are several texts and incidents from the time of the Messenger ﷺ and the righteous *Khulafaa'* which all indicate this.

- They used to walk in the markets, buying and selling, and the markets are public property. Ahmad reported from Ka'b Bin Malik:

«... فَبَيْنَا أَنَا أَطْوُفُ السُّوقَ إِذَا رَجُلٌ نَصْرَانِيٌّ جَاءَ بِطَعَامٍ يَبْاعُهُ يَقُولُ: مَنْ يَدْلِيلَ عَلَى كَعْبِ بْنِ مَالِكٍ؟...»

- “*While I was roaming through the market, a Christian came with some food to sell, saying: who will direct me to Ka'b Bin Malik?*” and this indicates that the Muslims and Dhimmis used to visit the markets for their needs in the same manner.
- They used to utilise the water, fire and pastures. Ibn Maja reported from Abu Hurayrah that the Prophet ﷺ said:

«ثَلَاثٌ لَا يُمْسِعُنَّ: الْمَاءُ وَالْكَلْأُ وَالنَّارُ»

- “*Three can not be denied (to anyone): water, fire and pastures*”. The companions agreed that the Christians of Al-Sham could drink from the rivers with the Muslims, and similarly the same applied to those who remained Magians in Iraq and Bahrain, and similarly the Coptics in Egypt used to drink and irrigate from the Nile. They would all cut wood from the forests, irrigate their crops from the public rivers and shepherd their flocks in the public pastures. Today they would utilise petrol and its derivatives and electricity, since they are both from the: “fire” mentioned in the narration.
- They have the right to revive dead land, due to what is reported by Ahmad and Al-Tirmidhi with an authentic chain from Jabir who said that the Messenger of Allah ﷺ said:

«مَنْ أَحْيَا أَرْضًا مَيِّتَةً فَهِيَ لَهُ»

- “**whoever revives a dead land, it belongs to him**” and what was reported by Al-Bukhari from Aisha(ra) that the Prophet ﷺ said:

«مَنْ أَعْمَرَ أَرْضًا لَيْسَتْ لِأَحَدٍ فَهُوَ أَحَقُّ»

- “**He who cultivates land that does not belong to anybody is more rightful (to own it).**”. And what is reported by Abu Dawud At-Tayalisi from Aisha(ra) who said that the Messenger of Allah ﷺ said:

«الْعِبَادُ عِبَادُ اللَّهِ، وَالْبِلَادُ بِلَادُ اللَّهِ، فَمَنْ أَحْيَا مِنْ مَوَاتِ الْأَرْضِ شَيْئاً فَهُوَ لَهُ،
وَلَيْسَ لِعَرْقٍ طَالِمٍ حَقُّ»

“**The slave is the slave of Allah, and the land is the land of Allah, and whoever revives any part of dead land, it belongs to him, and the oppressor has no right of possession**”.

All of these evidences are general and encompass all citizens, irrespective of whether they were Muslims or not.

- Also, all of citizens whether Muslim or *Dhimmi* can use the methods of transportation from land, sea and air. As for the land, the *Dhimmis* used to use it at the time of the Messenger of Allah ﷺ. Al-Tirmidhi reported from Aisha(ra) who said:

«كَانَ عَلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ ثَوْبَانٌ قِطْرِيَّانٌ غَلِيلَانِ، فَكَانَ إِذَا قَعَدَ فَعَرَقَ ثَفَلَا
عَلَيْهِ، فَقَدِيمَ بَرْ مِنَ الشَّامِ لِغُلَانِ الْيَهُودِيِّ، فَقُلْتُ: لَوْ بَعْثَتْ إِلَيْهِ فَأَشْتَرِبْتَ مِنْهُ ثَوْبِينِ
إِلَى الْمَيْسَرَةِ...»

- “**The Messenger of Allah (saw) was wearing two thick Qitri garments on. When he would sit, he would sweat since they were so heavy for him. Some clothes arrived**

from Ash-Sham for so-and-so, the Jew. I said: 'Perhaps you could dispatch a request to him to buy some garments (on credit) from him until it is easy (to pay)." As for the sea, they used to use it in the same manner as the Muslims at the time of the companions, and today that is analogous to the use of the airways.

- They can also use the general paths and the public communications as they are analogous to the public transportation.

This is the evidence for the first part of the article that all of the individual subjects have the right to utilise the public property.

As for the second part, which is that it is not allowed for the State to permit someone to individually possess or utilise it – its evidence is the narration of Abyad Bin Hammal when the Prophet ﷺ granted him some land which was salt laden, and when he ﷺ was informed that what he ﷺ had given him was similar to non-depleted water he ﷺ took it back from him. Al-Tirmidhi reported from Abyad Bin Hammal that: "*He came to the Prophet ﷺ and asked him to assign him a salt laden land as a fief, and he granted it to him. And when he left, one person with the Prophet said: "Do you know what you have granted him? You granted him the non-depleted water". He ﷺ then took it away from him*". The other evidence is that which Al-Tirmidhi reported from Aisha(ra) and he said it is *Hasan Sahih*, and Ibn Khuzaymah reported in his *Sahih*, that the Messenger ﷺ said:

«مَنْ مُتَّخِذٌ مِّنْ سَبَقَ»

"*Mina is a resting place for whoever arrives there first*", and also the narration of Al-Sa'ab b. Jathamah with Al-Bukhari:

«لَا حِمَىٰ إِلَّا لِلَّهِ وَرَسُولِهِ»

“There is no Hima (for grazing the animals of Zakah) except for Allah and His Messenger”.

It is clear that most of the capitalist monopolies and rich companies and individuals who have imaginary wealth, have managed to do so because of the special privileges they get to exploit the different types of public property, such as gas, petrol and the other mineral resources, and the communications, transport, water and other things.

Article 141

The State is allowed to protect some of the dead land and any part of public property for any public interest.

The evidence is the report that the Prophet ﷺ said:

«لَا جَمِيعَ إِلَّا لِلَّهِ وَلِرَسُولِهِ»

“There is no Hima (for grazing the animals of Zakah) except for Allah and His Messenger.” reported by Al-Bukhari from Al-Sa’ab Bin Jathama, and the protection is to protect something that was for the general Muslims which then prevents the people from it, and to take it for themselves and so the Messenger ﷺ prohibited that, or in other words, he ﷺ forbade it. Therefore, it is not permitted for any person to do it including the Khalifah for himself, because he cannot permit what Allah (swt) forbade. From this understanding, it is prohibited for the State to give ownership to someone for anything that is part of public property, which would lead to the prevention of others benefiting from it. As for the State itself, in other words, the Khalifah, it is permitted for him to take something from the dead land and public

property for the sake of the interests of the Muslims, and not his own, and the evidence for this is what was reported from Ibn Umar who said:

«حَمَى النَّبِيُّ ﷺ التَّقِيعَ لِتِبْلِ الْمُسْلِمِينَ»

“The Prophet ﷺ protected (made it Hima) Al-Naqi’ for Muslims’ horses.” (reported by Ibn Hibban), and *Al-Naqi’* is the place where the water settles and so there are a lot of plants due to the water; in other words, it is a fertile place for grazing. And it is reported from Abu ‘Ubayd from Amir b. ‘Abd Allah b. Al-Zubayr, I consider it to be from his father, who said:

«أَتَى أَعْرَابِيُّ عُمَرَ فَقَالَ: يَا أَمِيرَ الْمُؤْمِنِينَ، بِلَادُنَا قَاتَنَا عَلَيْهَا فِي الْجَاهِلِيَّةِ، وَأَشْلَمْنَا عَلَيْهَا فِي الْإِسْلَامِ، عَلَامَ تَحْمِيهَا؟ قَالَ: فَأَطْرَقَ عُمَرُ، وَجَعَلَ يَنْفُخُ وَيَقْتُلُ شَارِبَةً، وَكَانَ إِذَا كَرِهَهُ أَمْرٌ فَتَلَ شَارِبَةً وَنَفَخَ، فَلَمَّا رَأَى الْأَعْرَابِيُّ مَا يَهُ جَعَلَ يُرَدِّدُ ذَلِكَ عَلَيْهِ، فَقَالَ عُمَرُ: الْمَالُ مَالُ اللَّهِ، وَالْعِبَادُ عِبَادُ اللَّهِ، وَاللَّهُ لَوْلَا مَا أَحْمَلَ عَلَيْهِ فِي سَبِيلِ اللَّهِ مَا حَمَيَثُ مِنَ الْأَرْضِ شَيْئًا فِي

«شِبْرٍ»

“A Bedouin came to Omar and said: O Amir of the believers, we fought on our land in Jahiliyyah, and we became Muslims while it is still under our possession, – Why are you protecting it (make it Hima)? Umar bowed his head, blew and twisted his moustache – would do so when distressed – so when the Bedouin saw what he was doing, he repeated what he said again. Then Umar said: The property is Allah’s property, and the slaves are Allah’s; I swear by Allah- had I not been charged with that in the cause of Allah, would I not have protected (made Hima) a hand-span of land”. The narration is explicit in the permissibility of the State protecting; in other words, it is permitted for the State to do something specific with what falls under public

property such as the grazing pastures in order to fulfil the interests of the Muslims, and the companions after the Messenger ﷺ used to do the same, and so it has become a normal practice for every *Khalifah*.

Article 142

Hoarding of wealth is prohibited, even if *Zakah* is paid upon it.

Its evidence is the words of Allah (swt):

﴿ وَالَّذِينَ يَكْنُزُونَ الْذَّهَبَ وَالْفِضَّةَ وَلَا يُنْفِقُوهَا فِي سَبِيلِ اللَّهِ فَبَشِّرْهُم بِعَذَابٍ أَلِيمٍ ﴾

“And those who hoard gold and silver and spend it not in the way of Allah - give them tidings of a painful punishment.” (TMQ 9:34), which is an evidence for the unrestricted forbiddance of hoarding wealth. Though this verse was revealed to do with the People of the Book, its words are general, and we are addressed by them as is clear from the beginning of the verse which says:

﴿ * يَأَيُّهَا الَّذِينَ إِنَّمَا يُنَفِّقُونَ كَثِيرًا مِّنْ أَلْأَخْبَارِ وَالرُّهْبَانُ لَيَأْكُلُونَ أَمْوَالَ النَّاسِ بِالْبَطْلِ وَيَصُدُّونَ عَنْ سَبِيلِ اللَّهِ وَالَّذِينَ يَكْنُزُونَ الْذَّهَبَ وَالْفِضَّةَ ﴾

“O you who have believed, indeed many of the scholars and the monks devour the wealth of people unjustly and avert [them] from the way of Allah. And those who hoard gold and silver.” (TMQ 9:34).

The evidence that the verse forbade the hoarding of gold and silver in a general, unrestricted way irrespective of whether the *Zakah* had been paid upon it or not is as follows:

First: the generality of this verse. The text of the verse, from both its wording and understanding, are evidence that the prohibition of hoarding wealth from gold and silver is a comprehensive prohibition. So, the opinion of permitting hoarding after the payment of *Zakah* is departure from the ruling of the verse whose indication is definite. This cannot be accredited except with evidence which would change the meaning of the verse or abrogate it, and there is no authentic text which takes it from its original meaning, and it is not possible that there could be evidence which takes it from its original meaning since it has a definite indication. So nothing remains except that there could be evidence which abrogates it, and there is no evidence which abrogates it. Therefore, its ruling remains confirmed, which is the forbiddance of hoarding wealth, even if *Zakah* was paid upon it; in other words, the unrestricted forbiddance of hoarding.

Second: Ahmad reported with an authentic chain from Abu Umamah who said:

«تُؤْمِنُ رَجُلٌ مِّنْ أَهْلِ الصُّفَّةِ، فَوُجِدَ فِي مِنْزَرِهِ دِينَارٌ، فَقَالَ رَسُولُ اللَّهِ كَيْفَيَّةُ دِينَارٍ؟ قَالَ: إِنَّمَا تُؤْمِنُ آخَرُ فَوْجِدَ فِي مِنْزَرِهِ دِينَارَانِ، فَقَالَ رَسُولُ اللَّهِ كَيْفَيَّةُ دِينَارَيْنِ؟ قَالَ: كَيْتَانٍ»

“A man from the Ahl Al-Suffah died, and a Dinar was found in his garments (waist-wrap); the Messenger of Allah ﷺ said: “he will be burnt”, then another died and two Dinars were found on

him, and the Messenger of Allah said: “he will be burnt twice””, and this means that it is completely forbidden to hoard gold and silver, even if it was only two or even just one *Dinar*, as long as it is being hoarded, in other words, the storage of wealth without a need that it would be spent on. And the Messenger ﷺ said that in respect to these two men because they were from those who used to live on charity and yet they had gold on them, and so he said: “**“he will be burnt”** and: “**“he will be burnt twice”**”, alluding to His (swt) words:

﴿يَوْمَ سُحْمَىٰ عَلَيْهَا فِي نَارِ جَهَنَّمَ فَتُنَكَّوْا بِهَا حِبَاهُهُمْ وَجُنُونُهُمْ﴾

“The Day when it will be heated in the fire of Hell and seared therewith will be their foreheads, their flanks, and their backs.” (TMQ 9:35), which is part of the verses of hoarding; in other words, he ﷺ was alluding to the verses regarding hoarding. This is an evidence for the complete, comprehensive forbiddance of hoarding irrespective of whether it amounted to the value which *Zakah* should be paid upon or not, and irrespective of whether *Zakah* was paid upon it or not; so any hoarding is prohibited.

Third: The conjunction in His (swt) words:

﴿وَلَا يُنْفِقُوهُنَا فِي سَبِيلِ اللَّهِ﴾

“And spend it not in the way of Allah.” (TMQ 9:34) contrasts with His (swt) words:

﴿وَالَّذِينَ يَكْنِزُونَ الْذَّهَبَ وَالْفِضَّةَ﴾

“And those who hoard gold and silver.” (TMQ 9:34) and thus indicating accordingly that the verse covers two rules: the first being the hoarding of wealth and the second the lack of spending in the path of Allah (swt). The text of the verse indicates the threat of

a severe punishment connected to these two issues - in other words, for those who hoard gold and silver and those who do not spend them in the path of Allah (swt), then announce to them a severe punishment. Therefore, it becomes clear that he who does not hoard, but does not spend in the path of Allah (swt), is encompassed by the threat, and likewise the one who spends in the path of Allah (swt) and yet he hoards wealth is also encompassed by the threat. Al-Qurtubi said: "*Whoever does not hoard, and withholds spending in the path of Allah, must also be the same*". The intention of the words:

﴿ فِي سَبِيلِ اللهِ ﴾

"**in the way of Allah**" in the verse is *Jihad*, since it is mentioned alongside spending. When the words: "**in the way of Allah**" are connected to spending, then their meaning is *Jihad*, unless there is an indication found which takes it away from that meaning. Accordingly, the words:

﴿ وَلَا يُنفِقُونَ ﴾

"**and spend it not**" are not suitable as an evidence that if they hoard wealth and spend from it in the path of Allah (swt) they are not included in the punishment, since the meaning of the verse is not, and whoever hoards wealth in that they do not spend it in the path of Allah (swt) then announce to them a severe punishment, with the conjunction being explanatory and so, therefore, if the hoarded wealth was spent in the path of Allah (swt), the hoarder would not be punished. Rather, the meaning of the verse is that whoever hoards then announce to them a punishment and whoever does not spend in the path of Allah (swt) then announce to them a punishment. The conjunction is a conjunction of dissimilarity and not explanatory. Therefore, the forbiddance of hoarding is

unrestricted, irrespective of whether some of it was spent in the path of Allah (swt) or not, and the issue of the forbiddance of hoarding is a different issue than the forbiddance of not spending in the path of Allah (swt). Accordingly, it is clearly seen that the verse forbids hoarding wealth even if *Zakah* had been paid upon it and even if some had been spent in the path of Allah (swt).

Fourth: Bukhari reported from Zayd b. Wahb who said: “*I passed by Abu Dharr in Al-Rabtha, so I asked him: What brought you to this place? He replied: We were in Ash-Sham where I had a dispute with Mu’awiyah over:*

﴿وَالَّذِينَ يَكْنِزُونَ الْأَذْهَبَ وَالْفِضَّةَ وَلَا يُنفِقُوهَا فِي سَبِيلِ اللَّهِ﴾

“And those who hoard gold and silver and spend it not in the way of Allah.” (TMQ 9:34) and so Mu’awiyah said: “This was revealed concerning the People of the Book” so I said: “It was revealed concerning them and us”, and this was the issue between us. So he wrote to Uthman complaining about me, and so Uthman wrote to me telling me to come to Madinah. I went there and the people gathered around me as though they had never seen me before. I mentioned this to Uthman, and he said: “If you wish, you can stay close”. This is what led me to this place, and if an Abyssinian presided over me, I would listen and obey”. Therefore, the difference between Abu Dharr and Mu’awiyah was regarding who the verse was revealed about, and not its meaning, and if Mu’awiyah or ‘Uthman (ra) had an authentic narration which mentioned that if *Zakah* was paid from a wealth it would not be considered a hoard, Mu’awiyah would have used it against Abu Dharr’s opinion and Abu Dharr would have been silenced or ‘Uthman (ra) would have used it to silence him. This indicates that the generality of the verse and its unrestricted nature was not the cause of difference between Mu’awiyah and

Abu Dharr, and between Mu'awiyah and 'Uthman (ra), and it is not confirmed that they had a narration which opposed that.

Accordingly it is clear that the verse is general covering all gold and silver, irrespective of whether some of it was used in *Jihad*, and whether *Zakah* had been paid upon it, and whether it reached the amount required for *Zakah* to become obligatory or not. Therefore, all hoarding is forbidden (*Haram*).

Those who permit hoarding if *Zakah* had been paid upon it have no authentic evidence and all of their evidences are not considered valid due to their weakness and the poor chains of narrations. Even though Bukhari wrote a section entitled: “*Chapter – It is not a hoard when Zakah has been paid upon it*”, he did not produce a single narration which indicates the heading, since not even a single one was authentic to him. All the narrations used as evidence for the permissibility of hoarding once *Zakah* had been paid upon it are not authentic except for a single one of them. This narration is the narration regarding jewellery which was reported by Umm Salamah, and all of the other narrations which were reported in this issue are considered as lies, and have been criticised from both the angle of the chain and text of the narration.

With respect to the narration of Umm Salamah that they use as an evidence to prove the permissibility of hoarding gold and silver if *Zakah* is paid upon it, it is as follows: Abu Dawud reported from the chain of Thabit b. Ajlan from Ataa from Umm Salamah who said:

«كُنْتُ أَبْسُرُ أَوْضَاحًا مِنْ ذَهَبٍ فَقُلْتُ: يَا رَسُولَ اللَّهِ، أَكْنُتُ هُوَ؟ قَالَ: مَا بَلَغَ أَنْ شُوَدَّى رَجَاتُهُ فَزُجِيَ فَلَيْسَ بِكُنْتِي»

“I used to wear gold ornaments. I asked: Is that a treasure (*Kanz*), Messenger of Allah? He replied: whatever

reaches a quantity on which Zakah is payable is not a treasure (Kanz) when the Zakah is paid”. The word used in the narration is *Al-Awdhah*, which is a type of jewellery. It is mentioned in the dictionary of *Al-Muhit*: “*Al-Wadeh...and it is silver jewellery and its plural is Awdhah*”. This narration is weak because Thabit b. Ajlan is controversial when he is the single narrator in a narration. Al-Dhahabi said regarding Thabit in his biography: *From the narrations which are refuted from Thabit is the narration of ‘Attab from ‘Ata’ from Umm Salamah*”. Despite that, even if it was authentic, it is limited to the jewellery which women wear, and is not considered to be a hoard if its value reaches the *Nisab*, and subsequently the *Zakah* on it had been paid. This is the evidence for the payment of *Zakah* upon jewellery and it being made an exception from the generality of hoarding. This narration is not suitable to be used as an evidence for the permissibility of hoarding if *Zakah* had been paid upon it, from two angles:

Firstly: This narration came as an answer to a question, and every text which is an answer to a question, or came regarding a specific subject, is necessarily limited to what the question was about, and to that specific subject, and it is not considered general for everything since the words are connected to the question, or in other words, to the specific subject, and so they are specific and limited to that question and subject and do not apply beyond them. Accordingly, the narration is specific to jewellery, and so if *Zakah* is paid upon jewellery it is permitted to hoard it and anything else is not permitted. It cannot be argued that the *Shari’ah* rule is: “*the consideration is given to the generality of the words and not to the specification of the cause*” and the words here are general and so they are not specific to jewellery and rather they encompass jewellery and anything else. This cannot be argued because this rule is for the cause, and not for the reply to a question or a specific subject. It is a correct rule and its text indicates that it is a rule for

the cause and nothing else, since it says: “*not to the specification of the cause*”, and there is a difference between the cause and the specified subject, and between the cause and the reply to a question.

The cause is when an issue happens and then a *Shari'ah* rule is revealed regarding it, such as the case for the revelation of the verse:

﴿ وَمَا كَانَ لِمُؤْمِنٍ وَلَا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَن يَكُونَ لَهُمْ أَجْيَارٌ مِّنْ أَمْرِهِمْ ﴾

“It is not for a believing man or a believing woman, when Allah and His Messenger have decided a matter, that they should [thereafter] have any choice about their affair.” (TMQ 33:36). The cause for the revelation of this verse was that the Messenger ﷺ engaged his niece Zaynab to his servant Zayd, then her brother ‘Abd Allah b. Jahsh refused, and so Allah (swt) revealed this verse. Therefore, this is the cause of the revelation, and the rule: “*the consideration is given to the generality of the words and not to the specification of the cause*” applies to it. Another example is the cause for the revelation of the verse regarding inheritance; the Messenger visited Jabir b. Abd Allah while he was ill and asked the Messenger of Allah ﷺ: “**How should I deal with my property? What should I do with my property?**”, and the Messenger ﷺ did not reply until the verse of inheritance was revealed (agreed upon narration from Jabir) and so this was the cause of the revelation.

In the same way, all the causes of revelation are of this type, and it is upon this that the mentioned rule applies, which is different to the reply to a question, and to a specific subject. Since the specific subject is the issue that was being talked about, and the

issue that was being sought when the rule came regarding it, and the rule did not originate by itself, so, therefore, it is limited to that subject. In the same manner the words of the Messenger ﷺ can be connected to a specific question, and so the words used in a reply to a question are limited to that question.

For example, what Al-Bukhari mentioned from Abu Hurayrah who said:

«بَيْنَمَا نَحْنُ جُلُوسٌ عِنْدَ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِذْ جَاءَهُ رَجُلٌ فَقَالَ: يَا رَسُولَ اللَّهِ، هَلْ كُنْتُ، قَالَ: مَا لَكَ؟ قَالَ: وَقَعْتُ عَلَى امْرَأَتِي وَأَنَا صَائِمٌ، فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: هَلْ تَجِدُ رَقَبَةً تُعْنِقُهَا؟ قَالَ: لَا، قَالَ: فَهَلْ تَسْتَطِعُ أَنْ تَصُومَ شَهْرَيْنِ مُسْتَأْعِنٍ؟ قَالَ: لَا، فَقَالَ: فَهَلْ تَجِدُ إِطْعَامَ سِتِّينَ مِسْكِينًا؟ قَالَ: لَا، قَالَ: فَمَكَثَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فِيهَا نَحْنُ عَلَى ذَلِكَ أَتَيَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بِعَرَقٍ فِيهَا تَمْرٌ وَالْعَرْقُ الْمِكْتَلُ، قَالَ: أَيْنَ السَّائِلُ؟ فَقَالَ: أَنَا، قَالَ: خُذْهَا فَتَصَدَّقْ بِهِ، فَقَالَ الرَّجُلُ: أَعَلَى أَفْقَرِ مِنِّي يَا رَسُولَ اللَّهِ؟ فَوَاللَّهِ مَا بَيْنَ لَابَتِيهَا، يُرِيدُ الْحَرَّيْنِ، أَهْلُ بَيْتٍ أَفْقَرُ مِنْ أَهْلِ بَيْتِي، فَضَحِّكَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ حَتَّى بَدَأْتُ أَنْيَابِهِ ثُمَّ قَالَ: أَطْعِمْهُ أَهْلَكَ»

“While we were sitting with the Prophet a man came and said, "O Allah's Prophet! I have been ruined." Allah's Prophet asked what was the matter with him. He replied "I had sexual intercourse with my wife while I was fasting." Allah's Prophet asked him, "Can you afford to manumit a slave?" He replied in the negative. Allah's Prophet asked him, "Can you fast for two successive months?" He replied in the negative. The Prophet asked him, "Can you afford to feed sixty poor persons?" He replied in the negative. The Prophet kept silent and while we were in that state, a big basket full of dates was brought to the Prophet. He asked, "Where is the questioner?" He replied, "I (am here)."

The Prophet said (to him), "Take this (basket of dates) and give it in charity." The man said, "Should I give it to a person poorer than I? By Allah; there is no family between its (i.e. Medina's) two mountains who are poorer than I." The Prophet smiled till his premolar teeth became visible and then said, 'Feed your family with it.' when we were sitting down with the Prophet, a man came and said O Messenger of Allah ﷺ I am destroyed. And so the Prophet ﷺ asked him what did you do? He said I deliberately had intercourse with my wife during Ramadan. And so he ﷺ said to him: "Do you have a slave you can free? He said no. So he ﷺ asked him: Are you able to fast two consecutive months? He said no. So he ﷺ said: Could you feed sixty poor people? He said no. So the Prophet ﷺ waited, and in the meantime someone brought him a branch with a date and so he ﷺ said: Where is the questioner? The man replied: Here. So he ﷺ said: Take this and give it in charity. The man said: Upon someone poorer than me O Messenger of Allah ﷺ? I swear by Allah! There is no household poorer than me around. And so the Prophet ﷺ laughed until his teeth could be seen and then said: Feed your family with it".

The answer of the Messenger ﷺ is specific to the question asked, and so the words: "*free a slave*" are connected to the question of the Bedouin. Another example is the report that when he ﷺ was asked about the permissibility of selling dates if they get dried, and so the Prophet ﷺ asked:

«أَيْنُقُصُ الرُّطْبُ إِذَا يَسِّرَ؟ فَقَالُوا: نَعَمْ، فَقَالَ: فَلَا إِذَاً»

"Will the fresh dates shrink when they are dry?" They said yes, so he forbade that?" and they replied yes, and so he ﷺ said: "so he forbade that" reported by Abu Ya'la with this wording from Sa'd b. Abi Waqqas, and Al-Hakim and Ibn Hibban authenticated it. So, the answer of the Messenger ﷺ is specific to what he has

been asked, in other words, selling ripe dates for dried ones, and so his words: “*so he forbade that*” are connected to the question. This is not a cause for the rule, rather it is a reply to a question, and there is a big difference between both. Accordingly, the general wording which comes as a reply to a question is not a cause for the rule, it is only an explanation for the matter in question, and if general wording came as legislating a new rule for an issue that happened, then the legislation of the rule would be general, and the occurrence of the issue was the cause for the legislation of the rule. So the wide difference between the cause and the answer to a question becomes apparent. Therefore, the general rule encompasses its cause and anything else, whereas the answer to a question is specific to the question, since the words of the Messenger ﷺ are connected to it.

As for the question to the Messenger ﷺ regarding the sea water and his ﷺ answer:

«هُوَ الطَّهُورُ مَاءُ الْحِلْمَةِ»

“*Its water is purifying and its dead (animals) are lawful (to eat)*” (reported by Al-Tirmidhi from Abu Hurayrah and Abu ‘Isa said the narration is *Hasan Sahih*), it is also specific to what was asked about, which was the sea water, but the Messenger ﷺ explained more than he was asked about to the questioner. It still remains as the answer of the Messenger ﷺ specific to what he ﷺ was asked about, which was sea water, and it is limited to that. In the same manner when he ﷺ was asked about the: “*Budha’ah*”, well water, and he ﷺ said:

«إِنَّ الْمَاءَ طَهُورٌ»

“*water is pure*” (reported by Al-Tirmidhi from Abu Sa’id Al-Khudri, and he said it is *Hasan* and Ahmad authenticated it),

which is also connected to the question, and so he ﷺ replied to the question about the well water but his reply to the questioner encompassed more than what he ﷺ was asked about, yet it still remains as the answer of the Messenger ﷺ connected to the question. So he ﷺ was asked about ablution from sea water, and his answer was general encompassing ablution, *Ghusl* (ablution from major impurities) and more. In the book *Al-Imam Sharh Al-Ilmam* it is written: “why did he ﷺ not answer then with yes when they said: “can we make ablution with it?””. We say – because it would have been restricted to the situation of necessity, and this is not the case. Also, it would be understood from the restriction of the answer to: “yes” that only ablution could be made from it, and the remainder of impurities and dirt could not be purified by it”.

Therefore, the answer of the Messenger ﷺ regarding the sea water and well water is limited to what he ﷺ was asked about, and not general to everything. However, he ﷺ answered the questioner with more than what he asked, but still in the subject of his question, and the discussion is not about the conformity of the answer to the question, such that it could be said that the answer of the Messenger ﷺ was more general than the question of the questioner. Rather the discussion is that the answer was limited to the subject matter of the question, and was limited to that without going beyond it to another subject, and not about the conformity of the answer to the question. Shawkani mentioned in *Nayl Al-Awtar*: “and from the benefits of the narration is the legitimacy of giving extra in the answer to the question, in order to limit the benefit (from a direct answer) and the lack of necessity to be restricted”. Bukhari wrote a chapter on the issue entitled: “Chapter – who answers the questioner with more than what he asked”. And he mentioned the narration of Ibn Umar that:

«أَنْ رَجُلًا سَأَلَ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مَا يَلْبِسُ الْمُحْرِمُ؟ فَقَالَ: لَا يَلْبِسُ الْقُمِيصَ وَلَا
الْعِمَامَةَ وَلَا السَّرَّاويلَ وَلَا الْبُرْئَسَ وَلَا ثَوْبًا مَسَّهُ الْوَرْسُ أَوْ الرَّعْفَرَانُ، إِنْ لَمْ يَجُدْ النَّعْيَينِ
فَلْيَلْبِسْ الْخُفَّيْنِ وَلْيُقْطَعُهُمَا حَتَّى يَكُونَا تَحْتَ الْكَعْبَيْنِ»

“A man asked the Prophet: “What (kinds of clothes) should a Muhrim (a Muslim intending to perform `Umra or Hajj) wear? He replied, “He should not wear a shirt, a turban, trousers, a head cloak or garment scented with saffron or Wars (kinds of perfumes). And if he has no slippers, then he can use Khuffs (socks made from thick fabric or leather) but the socks should be cut short so as to make the ankles bare.””, so it was though he was asked about a situation of choice and so he answered it, and then he gave extra information about a situation of exigency, which is not unusual to the question since a travel may lead to that”. This all indicates that the reply is limited by the question; notice his words: “not unusual to the question”, irrespective of whether the reply was in conformity with what the questioner asked or was more than he asked, the answer is specific to the question. For this reason the question of Umm Salamah was regarding jewellery and so the answer of the Messenger ﷺ is specific to jewellery, and is limited to it, and does not apply to anything beyond it, because it is an answer to a question and not a cause for the revelation of a rule. Accordingly, the use of this narration as an evidence to prove the permissibility of hoarding if *Zakah* had been paid upon it has been shown to be invalid, since the narration is specific to jewellery.

The second of the two reasons: the verse of *Zakah* is general for every hoard, and the narration of Umm Salamah is specific to jewellery, and so the narration would be a specification for the generality of the verse. Therefore, the hoarding that is forbidden is the hoarding of anything other than jewellery, whereas

it is not prohibited to hoard jewellery if the *Zakah* on it is paid. It is not possible from any angle for the narration to be general to every type of hoard, and the simplest evidence that it is not general is that if it was then it would be an abrogation of the verse, since the verse would be general as would the narration and so it would be an abrogation for the verse. And the narration is an *Ahad* (singular) narration and so it is inconclusive whereas the verse is definite, and the narrations cannot abrogate the Quran even if they were *Mutawatir* (multiple chains of narrations such that the narration becomes definitely confirmed). This is because the Quran is definitely confirmed by words and meaning, and we worship Allah (swt) by its words and meaning, whereas the *Mutawatir* narration is definitely confirmed from its meaning and not its words, and we do not worship Allah (swt) with its words, and so it cannot abrogate the Quran. If this is the case for the *Mutawatir* narration, then what about the singular one? And so accordingly the use of this narration to prove the permissibility of hoarding if *Zakah* is paid upon it has been proven invalid, due to the impermissibility of Quran being abrogated by a narration.

Those who permit the hoarding of gold and silver if *Zakah* has been paid upon it, claim that the evidence for its permissibility is that the verse forbidding hoarding is abrogated by the verses which made *Zakah* obligatory, and that those verses abrogated the verse of hoarding by obligating *Sadaqah*, in other words, *Zakah*, upon it. The reply to this is that *Zakah* was made obligatory upon the Muslims in the second year after Hijrah, whereas the verse of hoarding was revealed in the ninth year after Hijrah, and what is revealed earlier does not abrogate what is revealed later. On top of that, it is imperative that there is an evidence which indicates that this verse is an abrogation for the other verse in order for it to be abrogation, and if there is no evidence found which indicates that abrogation, then it is not considered to be an abrogation.

Abrogation is the cancellation and lifting of the rule derived from a previous text by a subsequent text, and the cancellation of the previous rule by a subsequent text is conditional upon the subsequent text mentioning that it is an abrogation for the previous rule, such as his ﷺ words:

«نَهِيْشُكُمْ عَنْ زِيَارَةِ الْمُبُرُّ كُلُّوْهَا»

“(In the past) I forbade you from visiting graves, but visit them now.” (reported by Muslim from Buraydah) and His (swt) words:

﴿يَا أَيُّهَا الَّذِينَ إِذَا آتَيْتُمُوهُمْ مَا كُلِّمَ اللَّهُ رَسُولُهُ فَقَدِمُوا بَيْنَ يَدَيْهِمْ بَحْرٌ كُثُرٌ صَدَقَةٌ﴾
 ﴿ذَلِكَ خَيْرٌ لَّكُمْ وَأَطْهَرٌ فَإِنْ لَّمْ تَجْدُوا فَإِنَّ اللَّهَ غَفُورٌ رَّحِيمٌ﴾

“O you who have believed, when you [wish to] privately consult the Messenger, present before your consultation a charity. That is better for you and purer. But if you find not [the means] - then indeed, Allah is Forgiving and Merciful.” (TMQ 58:12). This verse enjoins spending charity when coming for consultation if possible, and then another verse comes and abrogates it:

﴿إِذَا أَشْفَقْتُمْ أَنْ تُقْدِمُوا بَيْنَ يَدَيْهِمْ بَحْرٌ كُثُرٌ صَدَقَتِّي فَإِذْ لَمْ تَفْعَلُوا وَتَابَ اللَّهُ عَلَيْكُمْ فَأَقِيمُوا الصَّلَاةَ وَءَاتُوا الْزَكُوْهَةَ وَأَطْبِعُوا اللَّهَ وَرَسُولَهُ﴾

“Have you feared to present before your consultation charities? Then when you do not and Allah has forgiven you, then [at least] establish prayer and give Zakah and obey Allah and His Messenger.” (TMQ 58:13). This verse, therefore, lifts the injunction to pay charity when coming for private consultation. The

narration explains explicitly within its text that it is an abrogation, and the verse explains it is an abrogation through indication by His (swt) words:

﴿أَشْفَقْتُمْ أَنْ تُقْدِمُوا بَيْنَ يَدَيِّ نَبْوَكُمْ صَدَقَتِر﴾

“Have you feared to present before your consultation charities?”, and so it is imperative that the text includes something that indicates that it is an abrogation from the previous text, either explicitly or through implicit indication. It is not sufficient for abrogation that there is an apparent conflict between the two texts, because there is no conflict between verses of Quran. As for what some Scholars have said, that these verses suggest conflict between them and claim that they are abrogated, the text of those verses themselves are explicit in the absence of any conflict and reconciliation between the texts is clear and there is nothing in the verses which indicates abrogation. Therefore, it is imperative that the subsequent text which is claimed to be an abrogation for a previous one includes something, either explicitly or by indication, that proves it is an abrogation. There is nothing in the verses of *Zakah* which indicate from near or far that they are an abrogation for the verse regarding hoarding, whether explicit or by an indication, and so they are not an abrogation for it. Even those who say that conflict between a subsequent and previous text makes the subsequent text an abrogation for the previous one, do not say that the verses of *Zakah* abrogate the verse regarding hoarding because there is nothing that suggests a conflict between the two, since the verses of *Zakah* are an address to pay *Zakah*, and the verse regarding hoarding is an address to call for the absence of hoarding. There is no conflict between these two issues, since there could be payment of *Zakah* and hoarding, and there could be the absence of payment of *Zakah* and the absence of hoarding. This is an additional reason why there is no abrogation even according to this

opinion, and so from what angle is this abrogation claimed? Accordingly, the fact that the *Zakah* was legislated in the second year after hijrah and the verse regarding hoarding was revealed in the ninth year after hijrah, in other words, seven years after *Zakah* had been obligated, and the fact that the verses of *Zakah* do not encompass, explicitly or through indication, what is necessary to indicate that they are an abrogation for the verse regarding hoarding, and above and beyond that there is no conflict between them, in other words, there is no conflict between the verses of *Zakah* and the verse regarding hoarding, therefore, the claim that the verse regarding hoarding is abrogated is a false claim, and so it is rejected.

Those who claim that it is permitted to hoard gold and silver if *Zakah* has been paid upon them say that the evidence for its permissibility is what has been reported in Bukhari: “*from Ibn Umar who said that a Bedouin asked him about the verse:*

﴿وَالَّذِينَ يَكْنُزُونَ الْذَّهَبَ وَالْفِضَّةَ﴾

“And those who hoard gold and silver” (TMQ 9:34) : *Whoever hoards it, and not pay its Zakah, so woe unto them; that was before the revelation of the verse of Zakah, and so when that was revealed Allah made it as a purification for the wealth*. It cannot be argued that this narration from Ibn Umar is a specification for the Quran by the *Sunnah*, or an abrogation of the Quran by the *Sunnah*. Rather this narration is an authentic information regarding that abrogation, and so it is from the category of abrogation of Quran by Quran, since what abrogated the Quran in this case was the Quran because *Zakah* was made obligatory by the Quran and not the *Sunnah*, and so it is obligatory to accept it since it is an authentic narration which reports that the verse is abrogated by another verse, and so the forbiddance of

hoarding is abrogated. Therefore, whatever has had *Zakah* paid upon it can be hoarded.

The answer to this is from four angles:

First: This is an *Ahad* narration which claims that the verse has been abrogated, and so as it is *Ahad* it is indefinite like any other *Ahad* narration, whereas the verse itself is definite, and what is definite is preferred to what is indefinite and so the verse is preferred due to the absence of anything abrogating it, and so it is acted upon due to the absence of abrogation because it is preferred and the claim of abrogation is rejected.

Second: The informing about the abrogation of a verse is like a reported narration which included a rule which abrogates another rule that was found in a verse of the Quran, so in the same manner that the narration cannot abrogate the verse even if it includes what indicates its abrogation, in the same way the information from Ibn Umar is not an abrogation for a verse of Quran simply by his statement that it is abrogated.

Third: Ibn Umar did not inform that the verse was abrogated as information from the Messenger ﷺ; in other words, he did not report that the Messenger ﷺ said that the verse is abrogated. Rather he was giving his opinion that the verse has been abrogated, since when the Bedouin asked him about the verse he replied that it has been abrogated and he did not relate that the Messenger ﷺ had informed him that it had been abrogated, and so it is the opinion of Ibn Umar that the verse was abrogated by *Zakah*. In other words, it was Ibn Umar's understanding that *Zakah* abrogated this verse, and it was not a narration from the Messenger ﷺ, and the opinion of Ibn Umar is not considered to be a *Shari'ah* evidence since the opinion of a companion is not considered to be a *Shari'ah* evidence for a *Shari'ah* rule, let alone as an abrogation of Quran.

Fourth: *Zakah* was obligated in the second year after *Hijrah*, and the verse which forbade hoarding was revealed in the ninth year after *Hijrah*, and so how can the earlier rule of *Zakah* abrogate a verse which was revealed seven years later? And therefore this narration is rejected from its text (*Dirayyatan*).

These four angles are without a doubt sufficient to show that using this narration as evidence is invalid, and to invalidate the claim that the verse is abrogated, and accordingly this narration is not suitable to be used as a proof that it is permissible to hoard if *Zakah* had been paid upon it.

And those who permit hoarding if the *Zakah* is paid upon it say that the evidence is that the Muslim is not accountable financially beyond *Zakah*, and the evidences for this are many, such as the agreed upon narration of the Messenger ﷺ to the Bedouin:

«... فَإِذَا هُوَ يَسْأَلُ عَنِ الْإِسْلَامِ ... إِلَى أَنْ قَالَ: وَدَكَرَ لَهُ رَسُولُ اللَّهِ ﷺ الرَّجَاهَ،
قَالَ: هَلْ عَلَيْهِ عَيْرٌ مَا؟ قَالَ: لَا، إِلَّا أَنْ تَطَوعَ»

“he was asking about Islam...till he said: And the Messenger of Allah (saw) told him about the Zakah (obligatory charity). The inquirer asked: "Am I obliged to pay anything besides this?" The Messenger of Allah (saw) said, "No, but whatever you pay voluntarily out of your own free will.” and what the Messenger said:

«لَيْسَ فِي الْمَالِ حَقٌّ بِسْوَى الزَّكَاةِ»

“There is nothing due on wealth other than Zakah.” (reported by Ibn Maja from Fatimah Bint Qays), and the narration in Tirmidhi that he considered *Hasan* from Abu Hurayrah that the Prophet ﷺ said:

«إِذَا أَذَّيْتَ زَكَّةً مَالِكَ فَقَدْ قَضَيْتَ مَا عَلَيْكَ»

“When you pay the Zakah you have fulfilled what is required of you”. These narrations indicate that there is nothing upon a Muslim’s wealth except for *Zakah*, so the words of the Messenger ﷺ:

«لَيْسَ عَلَيْكَ»

“**Nothing else is upon you**” and:

«لَيْسَ فِي الْمَالِ حُقُّ»

“**there is nothing due on wealth**” and:

«فَقَدْ قَضَيْتَ مَا عَلَيْكَ»

“**you have fulfilled what is required of you**” are general and so they encompass anything obligated from wealth. And this, therefore, indicates the permissibility of hoarding as long as the *Zakah* that is obligatory upon the Muslim is paid.

The answer to this is that the forbiddance of hoarding is an issue independent from *Zakah*, and the information mentioned prevents the obligating of any other rights in addition to *Zakah*, which does not prevent the presence of additional rules connected to wealth. Hoarding is from the rules relating to wealth and not from the obligatory rights upon the wealth. So Allah (swt) did not impose any right other than *Zakah* over the wealth owned by the Muslim from the angle of it being wealth, but He (swt) legislated other rules for wealth which are not from the rules of *Zakah*, such as the rules of interest in gold and silver, and those relating to exchange of gold and silver, and those relating to gold and silver found buried, which are all from the rules regarding wealth. The

rules regarding wealth found in the ground are from the financial rules like the rest of the rules, and they are not from the obligatory rights upon the wealth, and so accordingly these narrations have nothing to do with the hoarding of wealth, and consequently these narrations do not indicate the absence of the forbiddance of hoarding wealth if the *Zakah* on it had been paid, and, therefore, the use of these narrations as evidence has been invalidated.

This is with the knowledge that the two last narrations are disputed over as Al-Hafiz considered them both weak in *Al-Talkhis*, and especially the narration from Ibn Maja, since it is weak with a text that is conflicting.

Ibn Maja reported in his *Sunan*: Ali Bin Muhammad told us from Yahya Bin Adam from Sharik from Abu Hamza from Al-Sha'bi from Fatimah Bint Qays that she heard the Messenger ﷺ say:

«لَيْسَ فِي الْمَالِ حَقٌّ سِوَى الزَّكَاةِ»

“There is nothing due on wealth other than Zakah”.

But Al-Tirmidhi reported it in his *Sunan*: Muhammad b. Ahmad Bin Muddawiya from Al-Aswad Bin Amir from Sharik from Abu Hamza from Al-Sha'bi from Fatimah Bint Qays who said I asked, or the Prophet ﷺ was asked, about Zakah, and so he ﷺ said:

«إِنَّ فِي الْمَالِ لَحَقًا سِوَى الزَّكَاةِ»

“Indeed there is a duty on wealth aside from Zakah”.

Its chain confirming, and rejecting the right except for *Zakah* is weak, and the weakness from Sharik though he is trustworthy but he had a bad memory, and from Abu Hamza who is agreed to be considered weak due to his contradictions and bad

memory, and for this reason he mentioned the narration once confirming and once rejecting.

These are all the evidences of those who say that hoarding is permitted as long as *Zakah* has been paid upon it, in other words, all the evidences from which it is possible to find a semblance of an evidence that indicates the permissibility of hoarding if *Zakah* had been paid upon it, and they are flimsy evidences, and what is apparent is the effort to catch any way of using them as evidence, and it may be possible to say that there is nothing which justifies their use as evidence. The evidence that the verse regarding hoarding was revealed seven years after the obligation of *Zakah* is enough to explain the invalidity of using these evidences as proof. Therefore, it is clear that the verse is explicit that hoarding is comprehensively forbidden (*Haram*) even if *Zakah* had been paid upon it.

One issue remains which is: what is intended by the words hoarding (*Al-Kanz*) in the verse? The answer is that what is meant by hoarding is collecting wealth on top of wealth without a need. Hoarding linguistically means to collect wealth on top of wealth and to preserve it, and wealth is hoarded in other words, collected, and the hoard is anything which has been collected together, under or over ground. It is mentioned in the *Al-Muheet* dictionary: “*Al-Kanz: the buried wealth, and it is hoarded and gold and silver and whatever is used to protect wealth*”. Imam Abu Ja’far Al-Tabari said: “*Al-Kanz: Everything that is collected together, irrespective if it was held under or over ground*”, and the one who wrote *Al-‘ain* said: “*and it was stored*”. This is the meaning of *Al-Kanz* (the hoard) linguistically, and the Quran is explained by the linguistic meaning alone, unless the *Shari’ah* related a *Shari’ah* meaning for something, in which case it is explained by its *Shari’ah* meaning. And the word *Al-Kanz* has no authentic *Shari’ah* meaning related for it, and so it must be explained by its linguistic meaning alone,

which is that simply collecting wealth on top of wealth without a need, for its own sake, is considered to be the blameworthy hoarding for which Allah (swt) promised a painful punishment for the one who carried it out. Therefore, burying wealth means to keep it preserved needlessly, and to store the wealth in other words, not having a need for it, since if wealth is for spending it is not needed to be buried or stored. Accordingly the intention behind the words hoarding of wealth in the verse is to store it without a need for which it is spent, and so it applies to every type of storing of gold and silver without a need.

Article 143

Zakah is collected from Muslims, and is taken from the wealth which the *Shari'ah* has specified such as money, the profits of trade, cattle and grains. It is not taken from anything which the *Shari'ah* did not mention. It is taken from every owner irrespective of whether they were legally responsible/accountable (*Mukallaf*) such as the mature, sane person or whether they were not legally responsible such as the child and the insane. The Zakah is placed in a specific section of the *Bayt Al-Mal*, and is not spent except upon one or more of the eight categories mentioned in the noble Quran.

This article encompasses the following five issues: first: the obligation of *Zakah* upon the Muslims; second: it is taken from the property that the *Shari'ah* specified and nothing else; third: it is taken from every owner; fourth: it is placed in a specific section of the *Bayt Al-Mal*; fifth: it is not spent upon anyone other than the specific individuals that meet certain characteristics and numbers.

As for the first issue, which is the obligation of *Zakah*, its evidence is the noble Quran such as His (swt) words:

﴿وَأَتُوا أَلْزَكَوْنَ﴾

“And give *Zakah*” (TMQ 2:43), and:

﴿وَأَقِمْنَ الصَّلَاةَ وَإِذَا بَيْتَ الْزَّكَوْنَ﴾

“And establish prayer and give *Zakah*” (TMQ 33:33), and:

﴿رِجَالٌ لَا تُلْهِيهِمْ تِحْرِكَةٌ وَلَا يَبْعُغُ عَنْ ذِكْرِ اللَّهِ وَإِقَامُ الصَّلَاةِ وَإِيتَاءُ الْزَّكَوْنَ﴾

“Men whom neither commerce nor sale distracts from the remembrance of Allah and performance of prayer and giving of *Zakah*.” (TMQ 24:37). And there is also proof from the *Sunnah*, when the Messenger of Allah ﷺ sent Mu’adh to Yemen and said to him:

«أَعْنِمُهُمْ أَنَّ اللَّهَ افْتَرَضَ عَلَيْهِمْ صَدَقَةً، ثُوَّبَنِي مِنْ أَعْنَابِهِمْ وَثُرُّبَ عَلَى فُقَرَائِهِمْ»

“teach them that Allah has made it obligatory for them to pay the *Zakah* from their property and it is to be taken from the wealthy among them and given to the poor.” (agreed upon from Ibn Abbas), and the narration:

«بُنَيَّ الإِسْلَامُ عَلَى خَمْسٍ»

“*Islam is built upon five*” agreed upon from Ibn Umar, in which he رضي الله عنه mentioned:

«وَإِيتَاءُ الزَّكَاةِ»

“*and to give Zakah*”. It is reported from Abu Hurayrah that a Bedouin came to the Prophet ﷺ and said: “*Guide me to an action that if I did it I would enter Paradise*”. He ﷺ said:

«اللَّهُ لَا تُشْرِكُ بِهِ شَيْئًا، وَتُقْيِمُ الصَّلَاةَ الْمَكْتُوبَةَ، وَتُؤْدِيِ الرِّزْكَةَ الْمَفْرُوضَةَ، وَتَصُومُ رَمَضَانَ»

“*Worship Allah and do not associate anything with Him, and establish the obligatory prayers, and pay the necessary Zakah, and fast Ramadan*” (reported by Al-Bukhari). And it is narrated from Qais who said: “*Jarir Bin Abdullah said:*

«بَأَيْغَثْ رَسُولُ اللَّهِ ﷺ عَلَى إِقَامِ الصَّلَاةِ وَإِيتَاءِ الزَّكَاةِ وَالنُّصْحِ لِكُلِّ مُسْلِمٍ»

“*I gave pledge of allegiance to the Messenger of Allah ﷺ on the observance of prayer, payment of Zakah, and sincerity and well-wishing for every Muslim.*” (agreed upon). These evidences indicate the obligation of Zakah, and as for the fact that is not taken from anyone other than the Muslims, this is due to the words of the Messenger ﷺ in the narration of Mu’ath:

«تُؤْخَذُ مِنْ أَعْبَيَائِهِمْ»

“*taken from the wealthy*”, and as for the fact that it is given to the Muslims and not to anyone else is due to the words in the same narration:

«وَثُرَدُ عَلَى فُقَرَائِهِمْ»

“*and given to the poor*”, in other words, the Muslims.

With respect to the second issue, which is that *Zakah* is not taken from any property other than that which has been specified by the *Shari'ah*, its evidence is that the Legislator (swt) restricted the categories from which *Zakah* is taken by defining the amount which is taken from each of these categories. So everything that the *Shari'ah* defined a *Nisab* (minimum level after which the *Zakah* becomes obligatory) for, has *Zakah* taken from it once it reaches the *Nisab* and if it doesn't reach it then nothing is taken from it, due to what was related from Jabir who said:

«لَيْسَ فِيمَا دُونَ حَمْسٍ أَوْاقٍ مِنْ الْوَرقِ صَدَقَةٌ، وَلَيْسَ فِيمَا دُونَ حَمْسٍ ذَوْدٌ مِنْ
الْإِبْلِ صَدَقَةٌ، وَلَيْسَ فِيمَا دُونَ حَمْسَةٍ أَوْسُقٍ مِنْ التَّمْرِ صَدَقَةٌ»

“The Messenger of Allah said: “No (*Zakah*) *Sadaqa* is payable on less than five *Fiqiyas* (*Awaq*) of silver, and on less than five heads of camels, and less than five *Wasqs* of dates.” (reported by Muslim).

Zakah is not taken from property that has not had a *Nisab* defined by the *Shari'ah*. This is because though the verse is summarised (*Mujmal*), the narrations came and explained it. And so the narrations regarding *Zakah* explain the generality of the verse and are not specifications for it. There is a large difference between explanation and specification. The prayer came in a summarised form:

﴿وَأَقِيمُوا الصَّلَاةَ﴾

“And establishes the prayer” (TMQ 2:43) and the Messenger ﷺ came and explained it, and so anything outside of what the Messenger ﷺ explained as part of the prayer is not permitted to be considered relevant, since we are restricted by what

the Messenger ﷺ explained. In the same manner, the verse regarding *Zakah* came in a summarised form:

﴿وَأَتُوا آلَزَكُوٰةَ﴾

“And give Zakah” (TMQ 2:43):

﴿خُذُّ مِنْ أَمْوَالِهِمْ﴾

“Take, [O, Muhammad], from their wealth.” (TMQ 9:103):

﴿إِنَّمَا الْصَّدَقَاتُ﴾

“**Zakah expenditures are only for.**” (TMQ 9:60), and the narrations came and explained the categories from which *Zakah* is taken by explaining the amount which is taken from these categories, and the *Nisab* for them, *Zakah* is not taken from anything else, and it is forbidden to take *Zakah* from anything other than whatever the *Shari’ah* mentioned the *Nisab* for and the amount taken from it. So accordingly there is no *Zakah* upon housing, or cars or olives, since the Legislator did not mention the *Nisab* for any *Zakah* upon them, nor the amount which should be taken from them if they reached the value of the *Nisab*, and, therefore, there is no *Zakah* upon them, and taking *Zakah* is limited to the properties which have been mentioned in a *Shari’ah* text. Therefore, *Zakah* is only taken from the ten things which have been mentioned in authentic texts, which are camels, cows, cattle, gold, silver, wheat, barley, dates and raisins.

As for camels and cattle, the evidence is what has been related from Al-Zuhri from Salem from his father who said:

«كَانَ رَسُولُ اللَّهِ ﷺ قَدْ كَتَبَ الصَّدَقَةَ وَلَمْ يُخْرِجْهَا إِلَى عُمَالَاهُ حَتَّى تُؤْتَى، قَالَ: فَأَخْرَجَهَا أَبُو بَكْرٍ مِنْ بَعْدِهِ فَعَمِلَ بِهَا حَتَّى تُؤْتَى، ثُمَّ أَخْرَجَهَا عُمَرُ مِنْ بَعْدِهِ فَعَمِلَ بِهَا. قَالَ: فَلَقَدْ هَلَكَ عُمَرُ يَوْمَ هَلَكَ وَإِنَّ ذَلِكَ لَمَفْرُونٌ بِوَصِيَّتِهِ، قَالَ: فَكَانَ فِيهَا فِي الْإِلَيْلِ فِي حَمْسٍ شَاهَ، حَتَّى تَتَبَعَّي إِلَى أَرْبَعِ وَعِشْرِينَ، فَإِذَا بَلَغْتَ إِلَى حَمْسٍ وَعِشْرِينَ فَفِيهَا بِنْتُ مَحَاجِرٍ، إِلَى حَمْسٍ وَثَلَاثِينَ، فَإِنْ لَمْ تَكُنْ بِنْتُ مَحَاجِرٍ فَابْنُ لَبُونٍ، فَإِذَا زَادَتْ عَلَى حَمْسٍ وَثَلَاثِينَ فَفِيهَا بِنْتُ لَبُونٍ، إِلَى حَمْسٍ وَأَرْبَعينَ، فَإِذَا زَادَتْ وَاحِدَةً فَفِيهَا حُقَّةٌ، إِلَى سِتِّينَ، فَإِذَا زَادَتْ فَفِيهَا جَلِيلَةٌ، إِلَى حَمْسٍ وَسَبْعِينَ، فَإِذَا زَادَتْ فَفِيهَا ابْنَتَابْنَ لَبُونٍ، إِلَى تِسْعِينَ، فَإِذَا زَادَتْ فَفِيهَا حُتَّانٌ، إِلَى عِشْرِينَ وَمَائَةٍ، فَإِذَا كَثُرَتِ الْإِبْلُ فَفِي كُلِّ حَمْسِينَ حُقَّةٌ، وَفِي كُلِّ أَرْبَعينَ بِنْتُ لَبُونٍ. وَفِي الْعَمَّ مِنْ أَرْبَعينَ شَاهَ شَاهَ، إِلَى عِشْرِينَ وَمَائَةٍ، فَإِذَا زَادَتْ شَاهَ فَفِيهَا شَاتَانٌ، إِلَى مَائَتَيْنِ، فَإِذَا زَادَتْ فَفِيهَا ثَلَاثُ شَيَاهٍ، إِلَى ثَلَاثَمَائَةٍ، فَإِذَا زَادَتْ بَعْدَ فَلَيْسَ فِيهَا شَيْءٌ حَتَّى تَبْلُغَ أَرْبَعَمَائَةً، فَإِذَا كَثُرَتِ الْعَمَّ فَفِي كُلِّ مِائَةٍ شَاهٌ»

“And the Messenger wrote the Sadaqah (Zakah), and died before he could send it to his governors; he said: and so Abu Bakr sent it and acted according to it until he died, and then Omar did so. He said: Omar died the day he died, and wrote in his will: that there was a sheep (to be given) for every five camels, until twenty four camels. If there were twenty five camels, then a female baby camel (Bint Al-Makhaadh) is due, and if they didn't have one, then a male camel son of a milk-bearing camel (Ibn Laboon). If there were more than thirty five camels, then a daughter of a milk-bearing camel (Bint Laboon) is due up to forty five camels, and if there is one more up until sixty, then a female camel (Hiqqah) is due, and if there is more than that up to seventy five, then a female camel whose front teeth (Jaza'a; older than four years) is due, and for more than that up until ninety then two daughters of milk-bearing camels are due, and if there

are more than that up one hundred and twenty then two female camels are due, and if there are more than that then for every fifty a female camel is due and for every forty a daughter of a milk-bearing camel is due. And in cattle, for every forty until one hundred and twenty one female sheep is due, if there is one more than that up until two hundred then two female sheep are due, and if there are more than that then up until three hundred three female sheep are due, and if there is more than that then nothing is due until four hundred, at which point a female sheep is due for every one hundred” (reported by Ahmad and Abu Dawud and Al-Tirmidhi). It is narrated from Anas: “***Abu Bakr wrote to them: this is the obligation of Sadaqah which the Messenger of Allah ﷺ enjoined upon the Muslims, as Allah, the Mighty and Sublime, commanded the Messenger of Allah ﷺ***” (reported by Al-Bukhari), and then mentioned camels and cattle in the same manner as the narration of Al-Zuhri. The *Bint Al-makhaadh* is a female camel between one and two years, and a *Bint labun* is older than two years whose mother is milk bearing through giving birth, and the daughter of such a camel is called the *Bint labun*. And the *Hiqqah* is the female camel older than three years, and the *Jaza'a* is older than four. The fact that the narrations mentions the *Bint Labun* for more than thirty five camels indicates the permissibility to give a *Bint Labun* instead, which is why Bukhari added ‘female’.

As for cows, the evidence is what has been related from Mu'adh Bin Jabal who said:

«بَعْنَتِي النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِلَى الْيَمَنِ، فَأَمَرَنِي أَنْ آخُذَ مِنْ كُلِّ ثَلَاثَيْنَ بَقَرَةً تَبِيعًا أَوْ تَبِيعَةً، وَمِنْ كُلِّ أَرْبَعَيْنَ مُسِنَّةً...»

“The Messenger of Allah ﷺ sent me to Yemen, and commanded me to take from every thirty, cattle a male or female Tabi' (two-year-old baby cow), and from every forty, a Musinnah

(*three-year-old cow*)” (reported by Ahmad, Abu Dawud, Al-Nasa’i and Al-Tirmidhi who considered it *Hasan*). Yahya b. Al-Hakm narrated from Mu’adh who said:

«بَعْثَيْ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ اللَّهُ عَلَيْهِ أَصَدِقُ أَهْلِ الْيَمَنِ وَأَمْرَنِي أَنْ آخُذَ مِنْ كُلِّ ثَلَاثَيْنَ تَبِيعًا قَالَ هَارُونُ وَالشَّيْعُ الْجَدْعُ أَوْ الْجَدْعَةُ، وَمِنْ كُلِّ أَرْبَعَيْنَ مُسِنَّةً قَالَ فَعَرَضُوا عَلَيَّ أَنْ آخُذَ مِنْ الْأَرْبَعَيْنَ قَالَ هَارُونُ مَا بَيْنَ الْأَرْبَعَيْنَ أَوْ الْخَمْسَيْنَ وَبَيْنَ السَّيْنَ وَالسَّيْعَيْنَ وَمَا بَيْنَ الشَّمَانِيْنَ وَالشَّعْيَيْنَ فَأَبَيْتُ ذَكَرَ وَقُلْتُ لَهُمْ حَتَّى أَسْأَلَ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ اللَّهُ عَلَيْهِ عَنْ ذَلِكَ فَقُلِّدْتُ فَأَخْبَرْتُ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ اللَّهُ عَلَيْهِ فَأَمْرَنِي أَنْ آخُذَ مِنْ كُلِّ ثَلَاثَيْنَ تَبِيعًا وَمِنْ كُلِّ أَرْبَعَيْنَ مُسِنَّةً وَمِنْ السَّيْنَ تَبِيعَيْنِ... وَأَمْرَنِي رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ اللَّهُ عَلَيْهِ أَنْ لَا آخُذَ فِيمَا بَيْنَ ذَلِكَ...»

“The Messenger of Allah sent me to take the Sadaqah from the people of Yemen, and commanded me to take a Tabee'a from every thirty, and a Musinnah from every forty, and then they asked me what should be given for between fifty and sixty, and sixty and seventy, and eighty and ninety, and so I returned and informed the Prophet ﷺ who commanded me not to take anything between those” (reported by Ahmad with a chain considered *Hasan* by Al-Zayn). Ahmad reported that Mu’adh Bin Jabal who said:

«لَمْ يَأْمُرْنِي رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ اللَّهُ عَلَيْهِ فِي أَوْقَاصِ الْبَقَرِ شَيْئًا»

“The Messenger of Allah didn’t command me to take anything of Awqas Al-Baker.” Al-Awqas is the plural of Waqs and it is the amount between the Tabee’ah or Tabee’a, and the Musinnah, or Musinnah. The Tabee’ah or Tabee’a are the male and

female cows of less than one year in age, and the *Musinnah* is the female cow in her second year.

As for gold and silver, its evidence is what is related from 'Ali b. Abi Talib (ra) from the Prophet ﷺ who said:

«إِذَا كَانَتْ لَكَ مِائَةً دِرْهَمٍ وَحَالَ عَلَيْهَا الْحُولُ فَقِيهَا خَمْسَةُ دَرَاهِمٍ، وَلَيْسَ عَلَيْكَ شَيْءٌ، يَعْنِي فِي الدَّهْبِ، حَتَّى يَكُونَ لَكَ عِشْرُونَ دِينَارًا، فَإِذَا كَانَ لَكَ عِشْرُونَ دِينَارًا وَحَالَ عَلَيْهَا الْحُولُ فَقِيهَا نِصْفُ دِينَارٍ»

“*When you possess two hundred Dirhams at the end of the year (if you still have all of them), five Dirhams are levied on them as Zakah. There is nothing upon you (to be paid) in gold, until it reaches (the value of) twenty Dinars. When you possess twenty Dinars, at the end of the year, then there is half a Dinar levied on it (as Zakah)*” (reported by Abu Dawud and it is Hasan). A Dirham is six Daaniqs, and a Daniq is two Qiraats, and a Qiraat is two Tazuj and a Tazuj is two Habbah, and a Habba is a sixth of an eighth of a Dirham, which is a part of the forty eight parts of a Dirham. This is the weight of the *Shari'ah Dirham* which is mentioned in the narration. A Dinar is a Mithqaal, and the Mithqaal is a Dirham and 3/7 of a Dirham, which is the weight of the *Shari'ah Dinar* mentioned in the narration.

As for wheat, barley, dates and raisins, the evidence is what has been related by Al-Hakim and Al-Bayhaqi and Al-Tabarani from the narration of Abu Musa and Mu'adh when the Prophet ﷺ sent them both to Yemen in order to teach the people the issue of their *Deen*, saying:

«لَا تَأْخُذَا الصَّدَقَةَ إِلَّا مِنْ هَذِهِ الْأَرْبَعَةِ: الشَّعْرَى وَالْحُنْطَةُ وَالرَّبِيبُ وَالثَّمُرُ»

“Do not take Sadaqah (Zakah) except from these four: Barley, wheat, raisins and dates” (authenticated by Al-Hakim and Bayhaqi said that the narrators are trustworthy and the chain is connected). Al-Daraqutni reported in his Sunan from Abdullah BinAmrf who said:

«إِنَّمَا سَنَّ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ اللَّهُ عَلَيْهِ وَسَلَّمَ الرَّجَأَةَ فِي الْحِنْطَةِ وَالشَّعِيرِ وَالثَّمْرِ وَالرَّبَّيْبِ»

“The Messenger of Allah made Zakah only in the following four: Barley, wheat, raisins, and dates”, and it is narrated from Al-Shu’ba that the Prophet ﷺ wrote to the people of Yemen saying:

«إِنَّمَا الصَّدَقَةَ فِي الْحِنْطَةِ وَالشَّعِيرِ وَالثَّمْرِ وَالرَّبَّيْبِ»

“Sadaqah (Zakah) is only in wheat, barley, dates and raisins” (reported by Al-Bayhaqi from Al-Shu’ba as a Mursal narration).

As for the narrations that mention Zakah upon corn – they are weak. For example Ibn Maja reported from ‘Amru b. Shu’ayb from his father from his grandfather:

«إِنَّمَا سَنَّ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ اللَّهُ عَلَيْهِ وَسَلَّمَ الرَّجَأَةَ فِي الْحِنْطَةِ وَالشَّعِيرِ وَالثَّمْرِ وَالرَّبَّيْبِ وَالدُّرَّةِ»

“The Messenger of Allah made Zakah in the following: barley, wheat, raisins, dates and corn”. Al-Hafiz said in *Al-Talkhis*: “Their chains, in other words, the chains of Al-Daraqutni and Ibn Maja, are baseless since Al-Arzami is in them and he is rejected.” And similarly what Al-Bayhaqi reported from Al-Hasan who said:

«لَمْ يَفْرُضْ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَهُ إِلَّا فِي عَشَرَةِ أَشْيَاءِ: الْإِبْلُ وَالْبَقَرُ وَالْغَنَمُ وَالْذَّهَبُ وَالْفِضَّةُ وَالْجُنْطَةُ وَالشَّعْرُ وَالتَّمْرُ وَالزَّيْبَقُ، قَالَ ابْنُ عَيْنَةَ أَرَاهُ قَالَ وَالذُّرْدَةُ»

“The Messenger of Allah did not make Zakah obligatory except in ten things: camels, cows, sheep, gold, silver, barley, wheat, dates, raisins – Ibn ‘Uyayaba said: I think he said and corn”. Al-Hafiz said in *Al-Talkhis* that the report of Al-Hasan is a *Mursal* narration from ‘Amru b. ‘Ubayd who is very weak, and Abu Hatim said his narrations are not considered. Similarly Al-Bayhaqi himself mentioned in his *Sunan Al-Kubra* in another report from Al-Hasan which had ‘Amru b. ‘Ubayd in it:

«لَمْ يَجْعَلْ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَهُ الصَّدَقَةَ إِلَّا فِي عَشَرَةِ فَذَكَرَهُنَّ وَذَكَرَ فِيهِنَّ السُّلْطُ وَلَمْ يَذْكُرْ الذُّرْدَةَ»

“The Messenger of Allah did not obligate Sadaqah (Zakah) except upon ten and then he mentioned them, and mentioned a type of barley, but didn’t mention corn”. So, the two narrations with their weak chains, are different, and so accordingly the narration about the Zakah upon corn is weak.

These are the four categories (wheat, barley, dates and raisins) that have Zakah taken from them, and no Zakah is taken from anything else at all. As for what is narrated from Jabir that the Prophet ﷺ said:

«فِيمَا سَقَتِ الْأَنْهَارُ وَالْعَيْمُ الْعُشُورُ، وَفِيمَا سُقِيَ بِالسَّنَائِيَّةِ نِصْفُ الْعُشُورِ»

“A tenth is payable on what is watered by rivers, or rains, and a twentieth on what is watered by camels.” (reported by Muslim), and what is narrated from Ibn Umar that the Prophet ﷺ said:

«فِيمَا سَقَتْ السَّمَاءُ وَالْعِيُونُ أَوْ كَانَ عَنِّيَا الْعُشْرُ، وَمَا سُقِيَ بِالنَّصْحِ نِصْفُ
الْعُشْرِ»

“A tenth is due as Zakah, on every plant watered by heaven (rain water), springs, or underground water (i.e. watered without effort). While half a tenth is paid on what is watered by irrigation (i.e. machines are used).” (reported by Al-Bukhari), and Al-‘itri is something that takes its water through its roots without necessarily being watered, and from Abu Sa’id that the Prophet ﷺ said:

«لَيْسَ فِيمَا دُونَ حَمْسَةً أَوْ سُقِيَ صَدَقَةً»

“No Sadaqa (Zakah) is payable on less than five Wasqs of (dates or grains)”: All of these narrations are summarised (*Mujmal*) texts regarding the Zakah upon crops and fruits, which other narrations came and explained, and defined exactly what has Zakah taken from it, and above that their explanations came in a restrictive manner, such as what was mentioned by Al-Hakim and Al-Bayhaqi and Al-Tabarani:

«لَا تَأْخُذَا الصَّدَقَةَ إِلَّا مِنْ هَذِهِ الْأَرْبَعَةِ»

“Do not take Sadaqah (Zakah) except from these four” (authenticated by Al-Hakim and Al-Bayhaqi said its narrators are trustworthy). And what Al-Daraqutni reported in his *Sunan*:

«إِنَّمَا سَنَّ رَسُولُ اللَّهِ التَّرْكَاءَ فِي: الْخُبْزِ وَالشَّعِيرِ وَالثَّمْرِ وَالرَّيْبِ»

“The Messenger of Allah only made Zakah in: Barley, wheat, raisins, and dates”. There is no doubt that the words: “not” and: “except” in the first narration, and: “only” in the second, are all styles of restricting. Accordingly they indicate the

restriction of *Zakah* of crops and fruits to these four, and this is why the narrations: “***whatever is watered by the sky***” and: “***whatever is watered by the rivers***” and so on are not related to taking *Zakah* from whatever is grown, but rather they are summarised texts explained by other texts, and *Zakah* upon what is grown is restricted to being taken from the five mentioned categories and nothing else. This is supported by other narrations of the same meaning, such as what was related by Al-Daraqutni in his *Sunan* from ‘Amru b. Shu’ayb from his father from his grandfather that the Prophet ﷺ said:

«وَالْعُشْرُ فِي التَّمْرِ وَالرَّبِيبِ وَالْجُنْطَةِ وَالشَّعْبَرِ»

“***A tenth is due from dates, raisins, wheat and barley***”. All of this indicates that *Zakah* upon crops and fruits is only taken from specific categories, counted in some narrations as four which are barley, wheat, raisins and dates, and there are many narrations about this and all of them authentic. This all confirms that there is no *Zakah* on crops and fruits except what is mentioned in these texts.

With respect to His (swt) words:

﴿وَأَتُوا حَقَّهُ دِيْنَ حَصَادِهِ﴾

“***And give its due [Zakah] on the day of its harvest.***” (TMQ 6:141), this verse was not revealed for *Zakah* since it is a Makkah verse, and *Zakah* was only obligated in Madinah, which is why it mentions pomegranates which does not have anything due upon it. Mujahid said: “if he harvested his crop he would throw it to them from the grain tips, and if he found (fruit on) his palm trees he would throw it to them from the stalks”. And an-Nakha’i and Abu Ja’far said: “this verse is abrogated, and it is understood in relation to whatever resulted from his harvesting, evidenced by the

fact that the pomegranate mentioned after it has no Zakah upon it”. It is mentioned in the *Al-Muheet* dictionary: “harvesting crops, and plants are harvested....to cut by sickle”. So even if it is accepted that it is part of *Zakah* then it is applied to whatever has been harvested, because pomegranate is not harvested, and so it is from the summarised class of evidence, and the narrations came and explained from which harvested things *Zakah* applies to, which are wheat, barley and corn. In any case, since the verse was revealed in Makkah, and *Zakah* had not yet been obligated, there is enough reason not to use it as evidence.

As for what was related from Abu Sayyarah who said:

«فُلْتُ: يَا رَسُولَ اللَّهِ، إِنَّ لِي تَحْلَّاً، قَالَ: فَأَدْعُ الْعُشُورَ، قَالَ: فُلْتُ يَا رَسُولَ اللَّهِ، اخْرِمْ لِي جَبَلَهَا، قَالَ: فَحَمَّى لِي جَبَلَهَا» وَعَنْ عُمَرَ بْنِ شَعْبَنَ عَنْ أَبِيهِ عَنْ جَدِهِ قَالَ: «جَاءَ هِلَالٌ، أَحَدُ بَنِي مُتْعَانَ، إِلَى رَسُولِ اللَّهِ ﷺ بِعُشُورٍ تَخْلِ لَهُ، وَكَانَ سَلَةً أَنْ يَحْمِيَ لَهُ وَادِيًّا يُعَالِ لَهُ سَلَبَةً، فَحَمَّى لَهُ رَسُولُ اللَّهِ ﷺ ذِلِّكَ الْوَادِي. فَلَمَّا وُلِّ عُمَرُ بْنُ الْحَطَابِ رَضِيَ اللَّهُ عَنْهُ كَتَبَ سُقْيَانُ بْنُ وَهْبٍ إِلَى عُمَرَ بْنِ الْحَطَابِ يَسْأَلُهُ عَنْ ذِلِّكَ فَكَتَبَ عُمَرُ: إِنَّ أَذَى إِلَيْكَ مَا كَانَ يُؤَدِّي إِلَى رَسُولِ اللَّهِ ﷺ مِنْ عُشُورٍ تَخْلِهِ، فَاخْرِمْ لَهُ سَلَبَةً، وَإِلَّا فَإِنَّمَا هُوَ دُبَابٌ عَيْثٌ يَا كُلُّهُ مَنْ يَشَاءُ»

“I said: O Messenger of Allah, I have bees. He said then pay a tenth. I said: O Messenger of Allah, protect their mountains for me, so he did”, and what was narrated from ‘Amru b. Shu’ayb from his father from his grandfather who said: “Hilal, a man from the tribe of Banu Mat’an, brought a tenth of honey which he possessed in beehives to the Messenger of Allah ﷺ. He asked him (the apostle of Allah) to give the wood known as Salabah as a protected (or restricted) land. The Messenger of Allah ﷺ gave

him that wood as a protected land. When Umar Ibn Al-Khattab succeeded, Sufyan Ibn Wahb wrote to Umar asking him about this wood. Umar Ibn Al-Khattab wrote to him: If he (Hilal) pays you the tithe on honey what he used to pay to the Messenger of Allah ﷺ leave the protected land of Salabah in his possession; otherwise those bees are like those of any wood; anyone can take the honey as he likes.”. These are not suitable as evidence that Zakah is taken from honey. This is because the chain of the narration of Abu Sayyarah is disconnected (*Munqati’*), as it is from Sulayman b. Musa from Abu Sayyaara and Bukhari said: “Sulaiman did not meet anyone from the companions and there is nothing regarding Zakah on honey that is authentic”. The narration of ‘Amru b. Shu’ayb is reported by Abu Dawud and Al-Nasa’i, and Ibn ‘Abd Al-Barr considered it *Hasan* in *Al-Istidhkar*, but despite that it does not indicate that Zakah is obliged upon honey, since he paid it voluntarily and the valley was kept for him in exchange, as proven by the evidence of what Umar (ra) did having understood the reason and, therefore, made a similar order. This is supported by what is reported from Sa’d b. Abu Dhi’ab:

«أَنَّ النَّبِيَّ ﷺ اسْتَعْمَلَهُ عَلَى قَوْمِهِ وَأَنَّهُ قَالَ لَهُمْ: أَدْؤُوا الْعُشْرَ فِي الْعَسْلِ»

“That the Prophet ﷺ appointed him over his people and he said to them: Give a tenth of the honey”, which is considered a weak narration by Bukhari and Al-Azdi and others, and any how Shafi’i said: “And Sa’ad Bin Abi Dhi’ab told what was indicated that the:

«أَنَّ النَّبِيَّ ﷺ لَمْ يَأْمُرْهُ فِيهِ بِشَيْءٍ، وَأَنَّهُ شَيْءٌ رَآهُ هُوَ فَتَطَلَّعَ لَهُ بِهِ قَوْمُهُ»

“Prophet ﷺ did not order him with that, but rather it was something he thought of and voluntarily suggested it to his people”. All of this indicates that there is no Zakah upon honey and

even the narrations which are used as evidence indicate that there was no obligatory *Zakah* upon it.

All of these texts indicate that no *Zakah* is taken from anything which the *Shari'ah* has not explained the *Nisab* for. This is because the texts explain the *Nisab*, and the amount which should be taken, and, therefore, *Zakah* is obligatory upon it. And the question would be, upon what basis can *Zakah* be taken from anything which has no text related to it? And upon what basis could a specific amount be taken from it? This is especially the case since the texts which explained the *Nisab* and the amount due did not come with an *Illah*, and so it would not be correct to do *Qiyas* upon them (in other words, to use them as a basis for analogy). Above that, there are other texts which have explained the specific things that *Zakah* is due upon, and didn't stop there but rather restricted *Zakah* to these things, and used more than one style to demonstrate this restriction. This alone indicates that *Zakah* is not taken from anything other than the specific items which are mentioned in the texts, and nothing at all is due from anything else.

It might be argued that the text in the Quran and *Sunnah* made the obligation of *Zakah* general upon all wealth, since in the Quran He (swt) said:

﴿خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً﴾

“Take, [O, Muhammad], from their wealth a charity.”
(TMQ 9:103):

﴿وَالَّذِينَ فِي أَمْوَالِهِمْ حَقٌّ مَعْلُومٌ﴾

“And those within whose wealth is a known right.”
(TMQ 70:24) and in the narration:

«أعلمهم أن الله افترض عليهم صدقة في أموالهم»

“Teach them that Allah made Sadaqah (Zakah) from their property obligatory upon them” (agreed upon from Ibn ‘Abbas), and this encompasses all the categories of wealth, and so Zakah is binding upon all of them except from anything the *Shari’ah* made as an exception, and the *Shari’ah* did not make anything an exception except for horses and slaves due to his ﷺ words:

«لَيْسَ عَلَى الْمُسْلِمِ صَدَقَةٌ فِي عَبْدِهِ وَلَا فِي فَرِسِّهِ»

“No Sadaqah (Zakah) is to be paid on one’s horse (that he rides) or one’s slave” (agreed upon from Abu Hurayrah).

The response is that this text is summarised (*Mujmal*) and requires clarification, and the *Sunnah* clarified it comprehensively like interest, since the prohibition regarding interest came summarised and the *Sunnah* explained it, so it cannot be said that interest is prohibited in everything since the prohibition was general, rather it is said that interest is prohibited in usurious wealth which the *Sunnah* came and explained since the text was summarised and the *Sunnah* explained it, and so there is no interest in anything else. In the same manner it cannot be said that Zakah is obligatory in everything since the order for it came in a general form, but rather it is said that Zakah is obligatory in the wealth which the *Sunnah* came and explained the *Nisab* of the Zakah for, and in that manner explained the categories of wealth that Zakah is taken from. This is since Allah (swt) gave a general summarised order for Zakah, and did not explain the amount which should be taken nor when it should be taken, and so the narrations came and explained the obligatory amounts due, the *Nisab* after which these amounts become due, when they would be obligatory, and whether it would become due simply due to it being held such as with crops

or after a period of time such as with gold and silver. Consequently *Zakah* is taken according to this explanation from the *Sunnah*, and so the wealth which the *Sunnah* explained how and when *Zakah* is taken from is the wealth upon which *Zakah* is due, and anything else has no *Zakah* due upon it. Rather, it cannot be taken from it in any way since the time of when it would be due is not known, or the amount to be taken, or the *Nisab* after which it would become due, and so it would not be at all possible to take from anything other than what the *Shari'ah* explained.

There are clear texts reported in these issues: it is related from Abu Hurayrah who said:

«مَا مِنْ صَاحِبٍ دَهْبٌ وَلَا فِضَّةٌ لَا يُؤَدِّي مِنْهَا حَقَّهَا، إِلَّا إِذَا كَانَ يَوْمُ الْقِيَامَةِ،
صُفِّحْتُ لَهُ صَفَائِحُ مِنْ نَارٍ، فَأُحْمَيَ عَلَيْهَا فِي نَارِ جَهَنَّمَ، فَيَكُوْنُ بِهَا حَبِيبُهُ وَجَبْهَتُهُ
وَظَاهِرُهُ...»

“The Messenger of Allah ﷺ said: “Any person who possesses gold or silver and does not pay what is due on it (i.e., the Zakah); on the Day of Resurrection, sheets of silver and gold would be heated for him in the fire of Hell and with them his flank, forehead and back will be branded.” (agreed upon), and he ﷺ said:

«لَيْسَ فِيمَا دُونَ خَمْسٍ أَوْ أَقِيرٍ مِنْ الْوَرِقِ صَدَقَةً»

“There is no Sadaqah on less than five Dirham” (reported by Muslim from Jabir), and it is related from Ali Bin Abi Talib (ra) from the Prophet ﷺ:

«إِذَا كَانَتْ لَكَ مِائَتَا دِرْهَمٍ وَحَالَ عَلَيْهَا الْحُولُ فَفِيهَا خَمْسَةُ دَرَاهِمٍ، وَلَيْسَ عَلَيْكَ شَيْءٌ، يَعْنِي فِي الدَّهْبِ، حَتَّى يَكُونَ لَكَ عِشْرُونَ دِينَارًا، فَإِذَا كَانَ لَكَ عِشْرُونَ دِينَارًا وَحَالَ عَلَيْهَا الْحُولُ فَفِيهَا نِصْفُ دِينَارٍ»

“If you have two hundred Dirham for a year, then five Dirham are due from them, and there is nothing upon you (in terms of gold) until you have twenty Dinar, so if you have twenty Dinar for a year then half a Dinar is due” (reported by Abu Dawud and it is Hasan). And the Prophet ﷺ said:

«مَا مِنْ صَاحِبٍ إِلَيْهِ وَلَا بَقَرٍ وَلَا غَنِمٍ لَا يُؤْكَدُ يَرْكَانَهَا إِلَّا حَاءَتْ يَوْمَ الْقِيَامَةِ أَعْظَمَ مَا كَانَتْ وَأَسْمَنَهُ تَنْطَحُهُ بِقُرُونَهَا وَتَطْهُرُهُ بِأَظْلَافِهَا»

“There is no owner of camels, cattle or sheep who does not give Zakah on them, but they will come on the Day of Resurrection as big and fast as they ever were, and will gore him with their horns and trample him with their hooves.” (agreed upon from Abu Hurayrah), and he ﷺ said:

«وَالْعُشْرُ فِي : التَّمْرِ وَالرَّيْبِ وَالْحُنْطَةِ وَالشَّعِيرِ»

“A tenth is due on dates, raisins, wheat and barley” (reported by Al-Daraqutni in his Sunan from ‘Amru b. Shu’ayb from his father and from his grandfather). And it is reported from the same chain:

«إِنَّمَا سَنَّ رَسُولُ اللَّهِ ﷺ الزَّكَاةَ فِي : الْحُنْطَةِ وَالشَّعِيرِ وَالتَّمْرِ وَالرَّيْبِ»

“The Messenger of Allah ﷺ only made Zakah in wheat, barley, dates and raisins”. And from Mu’adh Bin Jabal when he was sent to Yemen by the Prophet ﷺ who said to him:

«خُذْ الْحَبَّ مِنَ الْحَبَّ، وَالشَّاءَةَ مِنَ الْعَنَمِ، وَالْبَعِيرَ مِنَ الْإِبْلِ، وَالْبَقَرَةَ مِنَ الْبَقَرِ»

“Take grains from grains, sheep from sheep, camels from camels and cows from cows.” (reported by Abu Dawud, Ibn Maja and Al-Daraqutni).

Accordingly, *Zakah* is only obligatory upon the wealth which the text came and explained, and is not obligatory upon anything else at all.

As for the claim that the Prophet ﷺ made certain wealth as an exception from *Zakah*, which are the slaves and horses, and this means that anything which was not made an exception has *Zakah* due upon it, is a false claim, since the Prophet ﷺ did not make specific wealth as an exception from *Zakah* as he ﷺ did not say that *Zakah* is obligatory upon all wealth except for slaves and horses. Rather the order regarding *Zakah* came summarised (*Mujmal*) and the texts clarified in detail what was summarised, and so the issue of exception is not present at all. As for the story of the slaves and horses, the Messenger ﷺ did not make them as an exception but rather he simply informed that there is no *Zakah* due upon them; Al-Bukhari reported from Abu Hurayrah who said:

«لَيْسَ عَلَى الْمُسْلِمِ فِي فَرِسَهٖ وَعَلَامِهِ صَدَقَةٌ»

“The Prophet ﷺ said: “There is no *Zakah* either on a horse or a slave belonging to a Muslim.”, and in another chain from Abu Hurayrah from the Prophet ﷺ who said:

«لَيْسَ عَلَى الْمُسْلِمِ صَدَقَةٌ فِي عَبْدِهِ وَلَا فِي فَرِسَهِ»

“The Muslim does not have to pay *Sadaqah* on his slave or his horse.”, and from Ali (ra) who said:

«فَدْ عَفَوْتُ لَكُمْ عَنْ صَدَقَةِ الْحُنَيْلِ وَالرَّقِيقِ، فَهَأُلُوا صَدَقَةً...»

“The Messenger of Allah said: “I have exempted you from having to pay Zakah on horses and slaves, bring Zakah of ...” (reported by Ahmad and the authors of the Sunan, and Al-Hafiz said its chain is Hasan), and this is not an exception rather it is only information, and, therefore, it is not wealth which has been made as an exception from Zakah.

In the same manner there is a text which mentions that there is no Zakah on donkeys; Abu Hurayrah said:

﴿فَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ خَيْرًا يَرَهُ ۝ وَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ شَرًا ۝﴾
يَرَهُ

“The Messenger of Allah ﷺ was asked about Zakah upon donkeys, and he said: “Nothing has come to me with respect to it except this verse – : “So whoever does an atom's weight of good will see it, And whoever does an atom's weight of evil will see it.” (TMQ 99:7) (agreed upon), and he ﷺ was also asked about horses as mentioned in the narration of Abu Hurayrah. This was not an exception, rather it was simply an answer to a question, and this cannot be considered as the Messenger ﷺ making slaves, horses and donkeys as exceptions to wealth and so saying: “there is no Zakah upon these and Zakah has been made obligatory upon all wealth”, since this completely contradicts the Shari'ah texts on the issue. There is no exception reported in the texts at all, because exception occurs if there is a general text regarding a rule, and in the same text, in other words, the same sentence, there is an exception made to that through one of the instruments or styles used to make an exception. For example: “the people came except Muhammad”, or: “Zakah has been obligated upon everything

except for horses and slaves”. Or it could occur if there was a general text, and another specific text came which specified the generality of the first text and was thereby an exception from it, and this is not present in the texts regarding the horses, slaves and donkeys because the text regarding *Zakah* was a summarised (*Mujmal*) text and the *Sunnah* came and explained it. Additionally the narration regarding the horses and slaves did not come as a general sentence which was then made an exception to through the use of one of the instruments or styles of making exceptions, but it was rather a separate sentence and is, therefore, considered to be information and not an exception.

As for *Zakah* upon trade, the evidence for its obligation is the narration and the *Ijma'* of the companions: Abu Dawud reported by his chain from Sumura Bin Jundub who said:

«أَمَّا بَعْدُ، فَإِنَّ رَسُولَ اللَّهِ ﷺ كَانَ يَأْمُرُنَا أَنْ تُخْرِجَ الصَّدَقَةَ مِنَ الَّذِي نُعِدُ لِلْبَيْعِ»

“The Messenger of Allah ﷺ used to command us to pay the Zakah upon what we had prepared for sale” (Al-Hafiz said in *Bulugh Al-Muram* that Abu Dawud reported it and its chain has some weakness). And from ‘Amru b. Hamas from his father who said: “**Omar commanded me and said: pay the Zakah on your property, and so I said: I have no property other than pipes and condiment. So he said: value them and then pay the Zakah upon them**” (reported by Ahmad, Al-Shafi’i and others). These and similar stories to this spread and no one amongst the companions rebuked it and so, therefore, it is considered to be an *Ijma'*. There is no *Zakah* due upon pipes and condiment themselves, and they are not normally possessed in such a big quantity such that there would *Zakah* due upon them unless they were amassed for trade, and so this is an indication that they were prepared for trading.

As for the third issue, which is the taking of *Zakah* from every owner, this means that *Zakah* is taken from every Muslim, male or female, sane or insane, mature or prepubescent. With respect to male and female, this is apparent from the generality of the texts, since *Zakah* is a right connected to the wealth and it is the single duty due from the wealth from the angle of it being wealth, which is why Allah (swt) said:

﴿خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً﴾ [التوبه ١٠٣]، ﴿وَالَّذِينَ فِي أَمْوَالِهِمْ حَقٌّ﴾

“Take, [O, Muhammad], from their wealth a charity.” (TMQ 9:103) and: **“And those within whose wealth is a known right.”** (TMQ 70:24) and in the narration:

«فَأَعْلَمُهُمْ أَنَّ اللَّهَ افْتَرَضَ عَلَيْهِمْ صَدَقَةً فِي أَمْوَالِهِمْ»

“then teach them that Allah has obligated Sadaqah (Zakah) upon their property” (agreed upon from Ibn ‘Abbas), and in the agreed upon narration which came as an answer to the question of the Bedouin:

«...فَإِذَا هُوَ يَسْأَلُ عَنِ الْإِسْلَامِ... إِلَى أَنْ قَالَ: وَذَكَرَ لَهُ رَسُولُ اللَّهِ ﷺ الرَّجَاءَ، قَالَ: هَلْ عَلَيَّ غَيْرُهَا؟ قَالَ: لَا، إِلَّا أَنْ تَطَوَّعَ»

“he was asking about Islam...till he said: And the Messenger of Allah (saw) told him about the Zakah (obligatory charity). The inquirer asked: "Am I obliged to pay anything besides this?" The Messenger of Allah (saw) said, "No, but whatever you pay voluntarily out of your own free will." which indicate that the obligation is upon the wealth from the aspect of it being wealth, without any consideration as to whether the owner was legally responsible or not. Allah (swt) made many obligations upon the Muslim who owned wealth in his characteristic as

someone who possessed wealth, or in other words, was rich, such as the obligation of *Jihad* with wealth, and finding the hungry, and paying expenses, and so on, but He (swt) did not obligate anything upon the wealth which was owned by Muslims except for one right which is *Zakah*, and restricted the obligatory rights over wealth to it and forbade any other right to be imposed upon it. This indicates that the obligation is empowered over the wealth in its aspect as wealth without looking at whether the owner was legally responsible or not, and this is a proof that wealth is what has *Zakah* taken from it, even if its owner was not legally responsible, in other words, even if they were a child or insane. Additionally, when Allah (swt) ordained obligations upon the Muslim, in his capacity as an owner of wealth, in other words, rights connected to wealth, they were obligated upon the Muslim generally irrespective of whether they were legally responsible or not, such as paying upkeep for close relatives and wives, and any criminal penalties or fines, and paying the value of anything which they destroyed, and so all of these are obligatory upon the child and the insane since they are connected to the wealth, and the *Zakah* is the same since it is a right connected to wealth. Above and beyond that, the Prophet ﷺ said:

«مَنْ وَلِيَ تَسْيِيمًا لَهُ مَالٌ فَلْيَتَحْجِرْ فِيهِ، وَلَا يَتَرْكُهُ حَتَّى تَأْكُلَهُ الصَّدَقَةُ»

“One who becomes the guardian of an orphan, who owns property, must trade on his behalf and not leave it (saved and unused) until it is all eaten up by Zakah (which is paid yearly)”, in other words, the *Zakah*, reported by Al-Tirmidhi and Al-Daraqutni from Amr b. Shu'ayb from his father from his grandfather 'Abd Allah b. 'Amru, and even though Al-Muthna b. Al-Sabah, who is differed over, is in the chain, it is also reported from 'Amru b. Shu'ayb to Umar Bin Al-Khattab (ra) as a *Mawquf* narration, and analogy (*Qiyas*) is made with the insane on the basis

that both are not legally responsible, and so whatever is obligatory upon the child who is not legally responsible is similarly obligatory upon the insane person.

As for the fourth issue, which is the fact that it is placed in a special section in the *Bayt Al-Mal*, this is because whatever wealth is due to the Muslims, and the owner is not specified, then it is from the rights of the *Bayt Al-Mal*. And every right which is necessary to be spent upon the interests and affairs of the Muslims, is a right upon the *Bayt Al-Mal*. *Zakah*, although it is from what the Muslims deserve, however its owner has been specified by the text of the Legislator (swt), since the *Shari'ah* specified its owner at the time it specified the aspects which it should be spent upon, and limited it to those eight areas alone. Allah (swt) said:

﴿ إِنَّمَا الْصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسَاكِينِ وَالْعَدْلَىٰ عَلَيْهَا وَالْمُؤْلَفَةُ قُلُوبُهُمْ ۚ ۝
وَفِي الرِّقَابِ وَالْغَرِيمَاتِ وَفِي سَبِيلِ اللَّهِ وَأَبْنَى السَّبِيلِ ۝

“Zakah expenditures are only for the poor and for the needy and for those employed to collect [Zakah] and for bringing hearts together [for Islam] and for freeing captives [or slaves] and for those in debt and for the cause of Allah and for the [stranded] traveller.” (TMQ 9:60), and as long as it has been restricted to these aspects then it is not from the rights of the *Bayt Al-Mal*, since it is wealth for specific aspects which is not permitted to be spent anywhere else, and the *Bayt Al-Mal* is simply the place for safekeeping it, but it is not considered part of the rights of the *Bayt Al-Mal*. Rather the *Bayt Al-Mal* is simply the place for storing the wealth because it is paid to the *Khalifah* and he is the one who distributes it; it is reported from Anas that a man said to the Messenger of Allah ﷺ:

«إِذَا أَذَّيْتُ الزَّكَاهَ إِلَى رَسُولِكَ فَقَدْ بَرِئْتَ مِنْهَا إِلَى اللَّهِ وَرَسُولِهِ؟ فَقَالَ رَسُولُ اللَّهِ ﷺ: نَعَمْ، إِذَا أَذَّيْتَهَا إِلَى رَسُولِي فَقَدْ بَرِئْتَ مِنْهَا، فَلَكَ أَخْرِيَهَا، وَإِنَّهَا عَلَى مَنْ بَدَّلَهَا»

“If I gave Zakah to your Messenger then am I absolved with Allah and His Messenger”, He said: *“Yes, if you gave it to my Messenger then you are free of blame with Allah and His Messenger, so you have its reward, and its sin is on the one who alters it”* (reported by Ahmad and authenticated by Al-Haythami and Al-Zayn). And it is reported from Bashir b. Al-Khasasiyah who said:

«أَقْلَنَا: يَا رَسُولَ اللَّهِ، إِنَّ قَوْمًا مِنْ أَهْلِ الصَّدَقَةِ يَعْتَدُونَ عَلَيْنَا، أَفَنَكْثُمُ مِنْ أَمْوَالِنَا بِقَدْرِ مَا يَعْتَدُونَ عَلَيْنَا؟ فَقَالَ: لَا»

“We said: O Messenger of Allah, some people who collect Zakah collect more than is due, can we hide our property to that proportion? He said: no.” (reported by Abu Dawud and ‘Abd Al-Razzaq, and Al-Mundhiri did not comment upon it). So this is proof that the Zakah is paid to the *Khalifah* and he is the one who sends his governors and workers to gather it, and then it is spent upon the specified aspects according to his opinion and *Ijtihad*, which is why the place for safekeeping it is the *Bayt Al-Mal*. However this is simply to store the Zakah since it cannot be spent anywhere except upon the areas specified, and, therefore, it is placed in a special section. So even though Zakah is from the income of the *Bayt Al-Mal* since it is paid to the *Khalifah*, and people are punished if they defer paying it, it is not spent unrestrictedly according to his opinion and *Ijtihad*, but rather his opinion and *Ijtihad* is restricted within the aspects, or restricted to those deserving of Zakah alone and nothing else.

As for the fifth issue: the fact that it is not spent except upon the specific individuals whose characteristics and numbers have been defined, is because Allah (swt) specified whom *Zakah* can be given to and limited its spending to those whom He (swt) had defined; Allah (swt) said:

﴿ إِنَّمَا الْصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسَاكِينِ وَالْعَمَلِينَ عَلَيْهَا وَالْمُؤْلَفَةِ فَلَوْلَاهُمْ
وَفَ أَرْقَابِ وَالْغَرَمِينَ وَفَ سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ ﴾

“*Zakah expenditures are only for the poor and for the needy and for those employed to collect [Zakah] and for bringing hearts together [for Islam] and for freeing captives [or slaves] and for those in debt and for the cause of Allah and for the [stranded] traveller.*” (TMQ 9:60). So it has been limited by the word: “***Only (Innama)***” which is from the styles of restriction, and, therefore, it is not permitted to spend it on anyone other than them at all, which is why the Messenger ﷺ said:

«لَا تَحِلُّ الصَّدَقَةُ لِعَيْنِي، وَلَا لِذِي مِرَّةٍ سَوِيًّا»

“***It is not permissible to give charity to a rich man (or one who is independent of means) or to one who is strong and healthy***” reported by Al-Tirmidhi from ‘Abd Allah b. ‘Amru, and he said it was *Hasan*, and Al-Hakim reported it from Abu Hurayrah and he authenticated it. And he ﷺ said regarding *Zakah*:

«وَلَا حَظْ فِيهَا لِعَيْنِي، وَلَا لِقَوْيِي مُكْتَسِبٍ»

“***and no rich man or one who is strong and able to earn has a share of Zakah.***” reported by Ahmad and Abu Dawud and Al-Nasa’i and Al-Dhahabi said that the narration is authentic and its narrators are trustworthy.

So this is evidence that it is not spent on anything at all outside of the mentioned eight categories.

Article 144

Jizya is collected from non-Muslims (people of Dhimma). It is to be taken from the adult men if they are capable of paying it, and it is not taken from women or children.

Its evidence is from the Quran and the *Sunnah*. As for the Book, Allah (swt) said:

﴿ حَتَّىٰ يُعْطُوا الْجِزْيَةَ عَنْ يَدِهِمْ صَفَرُونَ ﴾

“Until they give the Jizyah willingly while they are humbled.” (TMQ 9:29). As for the *Sunnah* then:

«كَبَرَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِلَى مَجُوسِ هَجَرٍ يَنْدُوُهُمْ إِلَى الْإِسْلَامِ، فَمَنْ أَسْلَمَ قُبْلًا مِنْهُ، وَلَا صُرِبَتْ عَلَيْهِ الْجِزْيَةُ فِي أَنْ لَا تُؤْكَلَ لَهُ ذَبِحَةٌ وَلَا تُنْكَحَ لَهُ امْرَأَةٌ»

“The Messenger of Allah wrote to the fire-worshippers of Hajar, calling them to Islam, whoever becomes Muslim, it is accepted from him, otherwise the Jizya is imposed upon him and that his slaughtered meat is not eaten and is not married to a woman” (reported by Abu ‘Ubayd in *Al-Amwal*, Abu Yusuf in *Al-Kharaj* and others). It is only taken from the one capable due to His (swt) words: “**Out of hand**”, in other words, from the one capable. It is taken from the men, not the women or children, due to the words of the Prophet ﷺ to Mu’adh:

«خُذْ مِنْ كُلِّ حَالٍ مِّنْ دِينَارٍ»

“Take one Dinar from everyone who has reached the age of puberty (Halim)” (reported and authenticated by Al-Hakim). And Al-Bayhaqi reported in his *Sunan Al-Kubra* from ‘Amru b. Shu’ayb from his father from his grandfather that the Messenger of Allah ﷺ:

«فَرَضَ الْجُزْيَةَ عَلَى كُلِّ مُحْتَلِمٍ مِنْ أَهْلِ الْيَمَنِ دِينَارًا»

“imposed one-Dinar Jizya upon every male adult (Muhtalim) in Yemen.” and the use of the words *halim* and *Muhtalim* with the masculine form indicates that it is not taken from women nor those who have not reached puberty, and similarly Umar (ra) wrote to the leaders of the army:

«أَن يضربوا الجزية، ولا يضربوها على النساء والصبيان، ولا يضربوها إلا على من جرت عليه الموسى»

“Impose the Jizya, and do not impose it upon the women and children, and do not impose it except upon the one who uses the blade”, and it is not known that anyone rebuked him over that and so it is considered to be an *Ijma’*. In the same manner it is not taken from the insane as he is analogous with the child.

Article 145

Land tax is payable upon the *Kharajiyah* land according to its capacity. Zakah is collected from the *‘Ushriyyah* land according to the actual production.

The evidence is what has been reported from Al-Zuhri who said:

«قَضَى رَسُولُ اللَّهِ ﷺ فِيمَنْ أَسْلَمَ مِنْ أَهْلِ الْبَحْرَينِ أَنَّهُ قَدْ أَخْرَزَ دَمَهُ وَمَالَهُ إِلَّا أَرْضَهُ، فَإِنَّهَا يَرِدُ لِلْمُسْلِمِينَ؛ لَا نَهُمْ لَمْ يُسْلِمُوا وَهُنْ مُتَّبِعُونَ»

“The Messenger of Allah ruled that the people who became Muslim from Bahrain have their blood and property protected, apart from their land, since it was a booty for the Muslims, since they did not embrace Islam at first and rather resisted” (reported by Yahya b. Adam in *Kitab Al-Kharaj*), in other words, they had resisted the Muslims. This is evidence that the lands of the countries that are conquered are considered part of the booty. Except that our master Umar (ra) came and kept the ownership of the land with the *Bayt Al-Mal* and left its benefits for those who lived upon it, and took land taxes from them in exchange for that utilisation, and these taxes were according to the potential of the land and not a fixed amount. Accordingly, areas of arable land (called *Jarib*) in parts of Iraq were taxed a *Qafiz* or a *Dirham*, and in other places the tax was upon different sizes of areas of arable land other than *Jarib*, and in areas of *Al-Sham* different sizes were used, and so it is known from this that he managed each land according to its capacity.

This was with respect to the *Kharajiyah* land, and as for the ‘*Ushriyyah* lands, which are the lands whose inhabitants embraced Islam without conquest, along with the Arabian Peninsula, the *Zakah* is taken from what is actually produced from the land, and this would be a tenth if it was watered by rainwater, and a twentieth if it was watered by irrigation.

Article 146

Muslims pay the taxes that the *Shari’ah* has permitted to be levied upon them in order to cover the expenditure of the *Bayt*

***Al-Mal*, on the condition that it is levied on that which is surplus to the individual's needs according to what is normal, and has to be sufficient to cover the needs of the State.**

This article includes three issues: firstly, the payment of taxes; secondly, that these taxes are not taken unless it is surplus wealth to personal needs according to the norms; thirdly, they are only taken as required to fulfil the needs of the *Bayt Al-Mal* and not beyond that.

As for the first issue, the word: “*tax*” is a Western term, which means what the authority imposes upon the subjects in order to manage their affairs. The question is: Is it permitted for the Islamic State to impose taxes upon the Muslims in order to administer their affairs? The answer to this is that the *Shari'ah* defined the income of the *Bayt Al-Mal* and fixed this income to administer the affairs of the subjects, and did not legislate taxes in order to administer their affairs. Additionally, the Prophet ﷺ used to administer the affairs of the subjects using these incomes, and it is not confirmed that he ﷺ imposed a tax upon the people, and that has not been reported from him ﷺ at all. When he ﷺ learnt that the people on the borders of the State were taking taxes upon the goods that were entering the land, he forbade them from doing so; it is reported from ‘Uqbah Bin Aamir that he heard the Messenger of Allah ﷺ say:

«لَا يَدْخُلُ الْجَنَّةَ صَاحِبُ مَكْسٍ»

“One who wrongfully takes an extra tax (*sahib maks*) will not enter Paradise.” (reported by Ahmad and authenticated by Al-Zayn and Al-Hakim), and Abu Khayr heard from Ruwayfi' b. Thabit who said: “***I heard the Messenger of Allah ﷺ say:***

«إِنَّ صَاحِبَ الْمُكْسٍ فِي النَّارِ»

“One in charge of imposing extra tax is in Hellfire” reported by Abu ‘Ubayd in *Al-Amwal*, and it was reported by Ahmad and authenticated by Al-Zayn. And he said: “It means *Al-‘Ashir*”, and *Al-‘Ashir* is the one who takes a tenth from the foreign trade. This indicates the forbiddance of imposing taxes according to the Western meaning of the word. The Messenger ﷺ said in an agreed upon narration from Abu Bakra:

«إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ عَلَيْكُمْ حَرَامٌ كُحْرُومَةٌ يَوْمَكُمْ هَذَا فِي بَلَدِكُمْ هَذَا...
في شَهْرِكُمْ هَذَا...»

“Verily your blood, your property and your honour are as sacred and inviolable as the sanctity of this day of yours, in this town of yours, and in this month of yours”, which is general and encompasses everybody including the State, and taking taxes is taking the wealth of the Muslim without his agreement, which indicates the impermissibility of taking it.

However, if the income of the *Bayt Al-Mal* from the defined areas and fixed amounts were not sufficient to administer the affairs of the subjects, since it could occur that there are issues which require administering and the income of the *Bayt Al-Mal* had already been spent, then would it be permissible in this situation to impose taxes or not? The answer to that is that what the *Shari’ah* obligated upon the *Bayt Al-Mal* includes what was obligated upon it alone and not obligated upon the Muslims, and what was obligated upon both the *Bayt Al-Mal* and upon the Muslims. It is not permitted for the State to impose taxes for the sake of whatever was obligated upon the *Bayt Al-Mal* alone and not upon the Muslims, so if there is money found in the *Bayt Al-Mal* it is used and if there is nothing then it is delayed until they find enough to

carry it out, and no taxes at all are imposed upon the Muslims for its sake. This is because the *Shari'ah* did not obligate that issue upon the Muslims, and so it is not permitted to impose taxes for it since taking taxes in this situation would be considered to be oppression which is forbidden (*Haram*). Likewise, it would also be considered as making obligatory something that Allah (swt) did not make obligatory, which is like forbidding something permitted, or permitting something forbidden, which is enmity against the *Shari'ah* and the one who does it is considered to be a disbeliever if he believed in it, and sinful if he did not, accordingly it is not permitted for the State to impose a tax upon the Muslims which the *Shari'ah* did not make obligatory from the Quran and the *Sunnah*. Examples of this would be for the sake of the salaries of those collecting the *Zakah*, and giving to people in order to bring them closer to Islam/those whose hearts are to be reconciled, and giving to slaves in order to purchase their freedom, and to those indebted in order to repay what they owe. And such as building a new road while there was another one present, or building a dam while there was rain water, or establishing a hospital while there was another one present which fulfilled the need, or anything else similar to these, where its absence does not lead to the existence of *Haram*, but rather its presence leads to betterment and is complementary to what exists. It is not permitted for the State to impose taxes upon the Muslims for anything like this in order to carry it out, since the *Shari'ah* did not obligate that. The jurists said regarding similar issues that their right upon the *Bayt Al-Mal* is considered according to: “presence not absence”, so if there was wealth present then they would deserve to have it spent upon them, and if it was absent then the absence voided their right.

As for what the *Shari'ah* obligated upon both the *Bayt Al-Mal* and the Muslims, then if there was no wealth to be found in the *Bayt Al-Mal*, or its wealth was finished, then in this situation the

State could impose taxes upon the Muslims in order to carry out the affairs which the *Shari'ah* obligated upon both them and the *Bayt Al-Mal*.

This is because it is confirmed by text that Allah (swt) obligated that upon them, and made the *Imam* responsible over them, so he is the one who collects this wealth from them and spends it upon the interests, such as the necessary expenditure upon the poor, the needy and the wayfarers, and there was not enough in the *Bayt Al-Mal* from the income of *Zakah* and everything else to spend upon them. This is since feeding the poor is obligatory upon the Muslims, as he ﷺ said:

«وَإِنَّمَا أَهْلُ عَرَصَةٍ أَصْبَحُ فِيهِمْ أُمُرُّوْ جَائِعٌ فَقَدْ تَرَأَّثُ مِنْهُمْ ذَمَّةً اللَّهُ تَعَالَى»

“Whenever the people of an area wake up with a hungry person amongst them, then Allah’s covenant and protection to them is absolved.” (reported by Ahmad from Ibn Umar and authenticated by Al-Hakim). Also, if there is not enough in the *Bayt Al-Mal* for the necessary expenditure upon the soldiers and war, and everything that is required for military preparedness, then a tax is imposed upon the Muslims in order for it to be carried out due to His (swt) words:

﴿وَجَاهَدُوا بِأَمْوَالِكُمْ وَأَنفُسِكُمْ فِي سَبِيلِ اللَّهِ﴾ [التوبه ٤١] وقال:
﴿وَالْجَاهِدُونَ فِي سَبِيلِ اللَّهِ بِأَمْوَالِهِمْ وَأَنفُسِهِمْ﴾

“And strive with your wealth and your lives in the cause of Allah.” (TMQ 9:41) and: *“And the Mujahideen, [who strive and fight] in the cause of Allah with their wealth and their lives.”* (TMQ 4:95), and it is reported from Anas who said: *The Messenger of Allah* ﷺ said:

«جاهِدُوا الْمُشْرِكِينَ بِأَمْوَالِكُمْ وَأَيْدِيكُمْ وَأَلْسُنَتُكُمْ»

“Strive against the idolators (Mushrikin) with your wealth, your hands and your tongues.” (reported by Ahmad and Al-Nisa'i and Al-Nisa'i and Al-Hakim authenticated it and Al-Dhahabi agreed). And in the same manner everything which if it were not undertaken would cause a harm to the Muslims, such as opening a route where there was no alternative, and opening a hospital whose opening was a necessity, and anything else similar whose expenditure would be deserved from the angle of interest and service without an alternative, and being a necessity from the necessities, and that the *Ummah* would be afflicted with a harm if it was not present, then taxes are imposed upon the Muslims in order to carry it out because the removal of harm is obligatory upon the Muslims; the Prophet ﷺ said:

«لَا ضَرَرَ وَلَا ضِرَارٌ»

“There should be neither harming nor reciprocating harm” (reported by Ahmad from Ibn 'Abbas, and Al-Hakim from Abu Sa'id Al-Khudri, and he authenticated it and Al-Dhahabi agreed). Likewise paying salaries for the army, judges and teachers, since these are from the issues that the *Shari'ah* obligated upon the Muslims, since learning has been made obligatory upon them, and so has establishing the courts and *Jihad*, as has been indicated by explicit texts. Therefore, the State is permitted to impose taxes in order to carry out these issues which the *Shari'ah* obligated upon the Muslims alongside the *Bayt Al-Mal*, since the texts are explicit in their obligation upon the Muslims. This is the evidence for the first issue of the article.

As for the second issue, its evidence is the words of the Messenger ﷺ:

«أَفْضَلُ الصَّدَقَةِ مَا كَانَ عَنْ ظَهَرٍ غَيْرِهِ»

“and the best Sadaqah is that which given out of surplus.” (agreed upon from Hakim Bin Hizam and Abu Hurayrah), and *Al-Ghina* is what the person did without, after taking what was necessary to fulfil his needs. It is reported from Jabir that the Messenger of Allah ﷺ said:

«أَفْضَلُ الصَّدَقَةِ مَا كَانَ عَنْ ظَهَرٍ غَيْرِهِ، وَأَيْدُ الْعُلَمَا خَيْرٌ مِنْ أَيْدِي السُّفَلَى، وَإِنَّمَا يَعْوِلُ

“The best of Sadaqah is that which given out of surplus; and the upper hand is better than the lower hand, and begin with the members of your household” (agreed upon). And in another narration in Muslim from Jabir:

«إِنَّمَا يَنْفُسِيكَ فَتَصَدَّقُ عَلَيْهَا فَإِنْ فَضَلَ شَيْءٌ فَلِأَهْلِكَ

“Start by giving Sadaqah to yourself, and if anything is surplus, then for your family”. So he ﷺ made providing for the person whom it is obligatory to support secondary to providing for oneself, and the tax is similar to that because it is like support and *Sadaqah*. And Allah (swt) said:

﴿وَيَسْأَلُونَكَ مَاذَا يُنْفِقُونَ قُلِ الْعَفْوُ﴾

“And they ask you as to what they should spend. Say: what you can spare.” (TMQ 2:219), in other words, that which would not be difficult to spend, which would mean that which is extra. This indicates that what is obligatory upon the Muslim as far as their wealth is concerned, irrespective of whether that was *Zakah* or maintenance, is only taken from whatever he has that is extra over what he needs according to the norms. Similar to that is the

tax, so it is not taken from the Muslim except from that which is extra and above what someone like him would require to fulfil their needs, or in other words, what is extra to what he needs to feed, cloth, shelter and provide help for himself and his wives, and what he spends to fulfil his needs and whatever is similar for someone in his position, because this is the meaning of the Messenger's ﷺ words: "***what is given out of surplus***".

As for the third issue, its evidence is the forbiddance of the *Shari'ah* from taking what is not obligatory, and whatever is additional to the needs is not obligatory upon the Muslim, and so it is forbidden to take it, and for this reason the amount taken is what is required for the *Bayt Al-Mal* and nothing more. 'Ali (ra) suggested to Umar Bin Al-Khattab (ra) that there should be nothing remaining in the *Bayt Al-Mal* saying to him: "***Divide whatever wealth you receive every year, and do not hold onto anything from it***" (reported by Ibn Sa'd from Al-Waqidi), and it is reported: "***that Ali used to spend everything in Bayt Al-Mal to the point that he would sweep it and then sits it in***" (reported by Ibn 'Abd alBarr in *Al-Istidhkar* from Anas b. Sirin). The *Khulafaa'* used to do this with respect to the income other than taxes, so how would they have treated the income from taxes? By greater reasoning there should remain nothing in the *Bayt Al-Mal*, and so nothing more than what is necessary is taken.

This is the evidence for the three issues of this article.

Article 147

The State has the right to impose taxes in order to undertake anything that the *Shari'ah* obligated upon the *Ummah* if the funds in the *Bayt Al-Mal* were insufficient since the obligation for funding it would be transferred onto the *Ummah*. The State has no right to impose a tax for the sake of whatever is not

obligatory upon the *Ummah* to undertake, and so it is not permitted to collect fees for the courts or departments or to fulfil any service.

The evidence for this is the same evidence that was mentioned for the first issue of the last article, in that the *Shari'ah* defined the general income, and that the Messenger ﷺ did not impose taxes and forbade the taking of custom duties, because it is a tax, and so it is a prohibition that encompasses every tax. It also mentioned that if there was no wealth in the *Bayt Al-Mal* to spend upon whatever the *Shari'ah* obligated upon the *Bayt Al-Mal* and the *Ummah*, the obligation transfers onto the *Ummah*, and whatever the *Shari'ah* obligated upon the *Bayt Al-Mal* alone then its obligation does not transfer on to the *Ummah* even if there was nothing left in the *Bayt Al-Mal* for it, rather it is delayed until the money for it is found and no taxes are imposed upon the *Ummah*. In the same way, no taxes are directly imposed upon the *Ummah* for the sake of anything that was not obligatory upon it, and similarly indirect taxes are also not imposed; so no fees are collected for the courts, or the departments, or import stamps, or permit fees, or anything similar. As for postal stamps, they are not considered to be indirect taxes, but rather they are the price for transporting letters, which is permitted. Therefore, no indirect tax for the sake of anything which the *Shari'ah* did not obligate upon the Muslims should be collected, since they are just like the direct taxes without any difference between them, and it is not permitted to impose them upon the *Ummah*.

Article 148

The budget of the State has permanent chapters determined by *Shari'ah* rules. As for the sections of the budget, the amounts

allocated for each section, and the issues of each section covered by these amounts are left to the opinion of the Khalifah and his *Ijtihad*.

The word *budget* is a Western term, and its meaning is the explanation of the income that the State takes, and an explanation of its chapters, which are the aspects that are gathered in the budget, and an explanation of its sections, which are the branches of these aspects, and an explanation of the amounts which are incoming. Alongside that, there is a draft of the explanation of the expenditure that the State will spend, by explaining its chapters which are the aspects upon which the expenditure will be used, and an explanation of its sections, in other words, the branches of these aspects, and an explanation of the amounts that will be spent upon every one of the issues mentioned in each section. This is the reality of the budget. This reality was not known to the Muslims; rather they knew the *Bayt Al-Mal*, and the income was sent there and the expenditure was spent from it. However, the presence of income for the *Bayt Al-Mal* and the fact that the expenditure comes from it, embodies the reality of the budget even if it was not named with that term, and there is nothing to prevent the use of this term according to its terminological meaning, which is the collection of the chapters of income and expenditure, with sections for each of these. Built upon this, the State has a budget, and the *Bayt Al-Mal* is responsible for this budget.

As for the preparation of this budget in terms of its chapters, sections and amounts which are drafted, these have been decided by the *Shari'ah* laws. So the *Shari'ah* laws introduced and decided income such as land taxes and booty, and expenditures were introduced and decided how it should be spent, and it was confirmed what must be spent upon and what needs to be spent

upon if the money is found to do so. The income and expenditure were introduced and decided by the *Shari'ah* rules, and therefore the chapters of the budget are permanently based upon that, since the *Shari'ah* decided them and the *Shari'ah* rule is permanent and does not change.

As for the sections, which are the branches which branch off from them such as the land tax upon the land with a natural water supply, and the land tax upon irrigated land, or anything similar, the *Khalifah* can draft them, since they are part of the management of the affairs which have been left to his opinion and *Ijtihad*. In the same manner, the amounts which are drafted are done so according to his opinion and *Ijtihad*, such as how much the *Jizya* and land tax would be, and anything similar, since it is part of what he is responsible for. Accordingly, the evidences for the *Shari'ah* rules are regarding the income and expenditure of the *Bayt Al-Mal*, and the control over whatever is in the *Bayt Al-Mal* that the *Shari'ah* did not specify is left to the opinion and *Ijtihad* of the *Khalifah*.

These three evidences: the evidences regarding the income, those regarding the expenditures, and the evidence that the *Imam* is responsible for governing the affairs, are the evidences for this article. As long as the *Khalifah* has the right to draft the sections of the incomes and amounts which are drafted in each section according to his opinion and *Ijtihad*, then there is nothing to prevent the drafting of an annual budget for the State including its sections and the amounts for each section, whether that is for the income or expenditure. What would be prohibited is drafting an annual budget for the sake of new chapters, and not its income and expenditure, since these chapters have been decided by the *Shari'ah* rules and so they are permanent.

Article 149

The permanent sources of income for the *Bayt Al-Mal* are the booty, *Jizya*, land tax, a fifth of buried treasure, and *Zakah*. This income is collected continuously irrespective of whether there was a need or not.

The evidences for this article are the evidences which include the income, so the evidence for booty is the words of Allah (swt):

﴿ مَا أَفَاءَ اللَّهُ عَلَى رَسُولِهِ مِنْ أَهْلِ الْقُرْبَى فَلِلَّهِ وَلِرَسُولِهِ وَلِذِي الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينِ وَابْنِ السَّبِيلِ ﴾

“And what Allah restored to His Messenger from the people of the towns - it is for Allah and for the Messenger and for [his] near relatives and orphans and the [stranded] traveller.” (TMQ 59:7). The evidence for *Jizyah* is His (swt) words:

﴿ حَتَّىٰ يُعْطُوا الْجِزْيَةَ عَنْ يَدِهِ وَهُمْ صَاغِرُونَ ﴾

“Until they give the *Jizyah* willingly while they are humbled.” (TMQ 9:29). The evidence for land tax is what was reported from Abu ‘Ubayd regarding the *Kharajiyah* land when he said:

«وَجَدْنَا الْآثَارَ عَنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَالخُلُفَاءِ بَعْدَهُ قَدْ جَاءَتْ فِي افْتِتَاحِ الْأَرْضِ بِشَلَاثَةِ أَحْكَامٍ: أَرْضٌ أَسْلَمَ عَلَيْهَا أَهْلُهَا فَهِيَ مَلْكُ أَيْمَانِهِمْ، وَهِيَ أَرْضٌ عَشَرَ لَا

شيء عليهم فيها غيره. وأرض افتتحت صلحاً على خراج معلوم فهم على ما صولحوا عليه لا يلزمهم أكثر منه. وأرض أخذت عنوة فهي التي اختلف فيها المسلمين، فقال بعضهم سبيل الغنيمة فتخمس وتقسم، فيكون أربعة أخماسها خططاً بين الذين افتسحوها خاصة، ويكون الخامس الباقى من سمى الله تبارك وتعالى. وقال بعضهم بل حكمها والنظر فيها إلى الإمام إن رأى أن يجعلها غنيمة فيخمسها ويقسمها كما فعل رسول الله ﷺ بخير ذلك له، وإن رأى أن يجعلها فيما فلا يخمسها ولا يقسمها ولكن تكون موقوفة على المسلمين عامة ما بقوا كما صنع عمر بالسوداد فعل ذلك، فهذه أحكام الأرض التي تفتح فتحاً

“We found reports from the Messenger of Allah ﷺ and the following Khulafaa’, regarding land conquering, in three rules: the land of those who had embraced Islam, so it belongs to them, and this is the land of ‘Ushr (tenth) and there is nothing (imposed) upon them other than that. And land which was opened through a peace treaty based upon an agreed land tax, and nothing more is imposed upon them. And the land which was taken by force, which is the subject that the Muslims differed over; some of them said it should be treated like booty, so a fifth is taken off it (by the State) and it is divided, and so four fifths is divided between those who had conquered the land, and the remaining fifth is for Allah (swt). And some said, no, rather its rule is left to the Imam; if he thinks it should be left as booty, a fifth is taken and the rest is divided in the same manner that the Messenger of Allah ﷺ did, then he can do that, and if he thinks that it should be kept as a spoil of war, it is left undivided but rather it is left for the generality of the Muslims as Omar did with Al-Sawaad. These are the rules regarding land which has been conquered”. The story of Muslims’ discussion with Omar (ra)

regarding the land of Sawaad (land of Iraq) is also reported by Abu Yusuf in *Al-Kharaj*.

As for the fifth of treasures its evidence is the words of the Messenger ﷺ:

«وَفِي الرِّكَارِ الْحُمُسُ»

“One fifth is compulsory to be paid (as Zakah) on buried Treasure.” And as for Zakah, its evidences are many, Allah (swt) said:

﴿وَءَاتُوا الْزَكَوةَ﴾

“**And give Zakah**” (TMQ 2:43), and the Prophet ﷺ said to Mu’adh:

«فَأَعْلَمُهُمْ أَنَّ اللَّهَ افْتَرَضَ عَلَيْهِمْ صَدَقَةً فِي أَمْوَالِهِمْ، ثُوَّبَدُ مِنْ أَعْبَانِهِمْ وَتُرْدُ عَلَى فُقَرَائِهِمْ»

“tell them that Allah has made the payment of Zakah obligatory upon them. It should be collected from their rich and distributed among their poor.”

All of these evidences convey the meaning of obligation, and so paying this wealth is an obligation, which is why it is taken perpetually regardless of the need, since Allah (swt) made it obligatory, and the obligation must be carried out.

Article 150

If the permanent revenues of the *Bayt Al-Mal* are not sufficient to cover the expenditure of the State, then it is possible to

impose taxes upon the Muslims. It becomes obligatory to impose taxes as follows:

- a. To fulfil the obligatory expenses upon the *Bayt Al-Mal* for the poor, needy, and wayfarers, and to undertake the obligation of Jihad.
- b. To fulfil the obligatory expenses upon the *Bayt Al-Mal* for remunerations of the civil servants and soldiers, as well as compensation for the rulers.
- c. To fulfil the obligatory expenses upon the *Bayt Al-Mal* to undertake the services and needs such as establishing roads, extracting water, building mosques, schools and hospitals.
- d. To fulfil the obligatory expenses upon the *Bayt Al-Mal* which are necessary in case of a disaster which afflicted the subjects such as famine, floods and earthquakes.

The evidence for this is that the *Shari'ah* prohibited the authority to impose taxes upon the Muslims simply based upon an order emanating from him; the Prophet ﷺ said:

«لَا يَدْخُلُ الْجَنَّةَ صَاحِبُ مَكْسٍ»

“One who wrongfully takes an extra tax (Sahib Maks) will not enter Paradise.” (reported by Ahmad and authenticated by Al-Zayn), and the custom duty is tax which is taken from the tradesmen at the borders of the country. This prohibition encompasses every tax due to the agreed upon narration of the Messenger ﷺ through Abu Bakra:

«إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ عَلَيْكُمْ حَرَامٌ كُحْرَمَةٌ يَوْمَكُمْ هَذَا فِي بَلَدِكُمْ هَذَا
فِي شَهْرِكُمْ هَذَا...»

“Verily your blood, your property and your honour are as sacred and inviolable as the sanctity of this day of yours, in this town of yours, and in this month of yours.”, which is general and so encompasses the *Khalifah* in the same way it encompasses the rest of the people. As long as the *Shari’ah* prohibited taking taxes, it is not permitted for the *Khalifah* to impose them upon the people based upon an order he made. However, if the purpose was something that Allah (swt) had made obligatory upon the Muslims, then it is permitted for the *Khalifah* to impose taxes upon the Muslims and take it from them by force for such purpose.

In this circumstance taking them would not be based upon an order from the authority but rather based upon what Allah (swt) had ordered, and the authority is merely implementing the order that Allah (swt) had made. So the *Shari’ah* permitted the *Khalifah* to take taxes if it was ordered by Allah (swt), with the condition that the order to take the taxes is from the *Khalifah* together with what Allah (swt) ordered the Muslims to fulfil, and not simply an order from the *Khalifah* alone to impose this tax. Based upon this, what the *Shari’ah* obligated upon the Muslims and the *Bayt Al-Mal* is spent upon from the *Bayt Al-Mal*, and if nothing is found in the *Bayt Al-Mal*, or if whatever was there had already been spent, or was not sufficient to fulfil the expenditure needs, then the *Khalifah* may impose taxes upon the Muslims according to the *Shari’ah* rules which obligated that issue upon the Muslims in the first place. And what were mentioned in the article are details of what Allah (swt) has obligated upon the Muslims.

As for clause: “a” its evidence is that Allah (swt) obligated the *Khalifah* to spend upon the poor, needy and wayfarer, and to spend

in order to undertake the obligation of *Jihad*, and this was also made an obligation upon the Muslims; the Prophet ﷺ said:

«مَا آمَنَ بِي مَنْ بَاتَ شَبْعَانَ وَجَاءَهُ جَائِعٌ وَهُوَ يَعْلَمُ»

“One who goes to bed full while he knows that his neighbour is hungry, does not believe in Me” (reported by Al-Bazzar from Anas and Al-Haythami and Al-Mundhiri considered it *Hasan*). And there are evidences related which mention the poor, needy, wayfarers and beggars and the verse of *Zakah*. And the evidences of *Jihad* include His (swt) words:

﴿وَجَاهُدُوا بِأَمْوَالِكُمْ وَأَنفُسِكُمْ﴾

“And strive with your wealth and your lives in the cause of Allah.” (TMQ 9:41).

As for clause: “b”, its evidence is that Allah (swt) obligated the *Khalifah* to pay for the expenses related to the civil servants, and the salaries for the soldiers according to what was agreed with them, and it is obligatory for the *Bayt Al-Mal* to recompense the *Khalifah* and the rest of the rulers, due to the evidence that the companions specified some money for Abu Bakr (ra) from the *Bayt Al-Mal* in return for him leaving his trade and being completely free to carry the duties of the *Khilafah*. In the same manner Allah (swt) made education, establishing the courts and *Jihad* with wealth obligatory upon the Muslims, and obligated them to establish the *Khalifah* in the same way it is obligatory upon them to establish the leader. As for the provisions for the soldiers, he ﷺ said in a report from Abu Dawud from Abdullah Bin Umar:

«لِغَارِي أَحْرَزْ، وَلِلْحَاجِلِ أَحْرَزْ وَأَحْرَزِ الْغَازِي»

“The warrior (Ghazi) gets his reward, and the one who equips (Ja’il) him gets his own reward and that of the warrior.”

And as for the maintenance of the civil servants, which are the teachers, judges, and those whom Allah (swt) has made it constantly obligatory to ensure they are established, then it is obligatory to pay the wages of those who undertake these issues, from the angle of the indication of necessity, in other words, the obligation to establish a judge necessitates the obligation of paying his wage, and from the angle of: “*Whatever is required to complete an obligation is itself an obligation*”, since the appointment of teachers and judges cannot be possible without the availability of money to cover their salaries. As for the remaining civil servants, if their work is part of what Allah (swt) obligated upon the Muslims and upon the *Bayt Al-Mal* such as the *Imams* of mosques, and the civil servants in the War Department and anything else similar, then taxes are imposed for their sake. With respect to whatever Allah (swt) obligated upon the *Bayt Al-Mal* alone such as the ones who collect the wealth from the people, then taxes are not imposed for their sake. And as for the recompense for the rulers, Allah (swt) obligated the Muslims to establish the ruler, and so it is obligatory for them to pay what is required to ensure he is free for his duties.

As for clause: “c”, its evidence is that Allah (swt) obligated the *Khalifah* to undertake the management of the interests of the Muslims by spending upon whatever interest they have and facilitating anything they need. The interest is what the whole *Ummah* uses, such as extracting the water, education, fixing the roads, and anything similar, and the utility is from the facilitation, which is what people utilise in order to fulfil their interests, such as a place of rest for travellers/passengers, public toilets, hospitals for the treatment of the ill and building mosques for the worshippers. It is said to utilise something is to use it, and so the Muslim utilises the space of the mosque for sitting and its water for ablution. So the

Shari'ah obligated the *Khalifah* with issues such as building roads, extracting water, building schools, mosques and hospitals and anything else similar, since they are part of the management of the affairs, and because the interest is to attain a benefit and protect against a harm, and not making these available leads to harm. And utilisation is whatever the people utilise to fulfil their needs, and its lack of availability would necessarily bring about harm, and removing the harm is an obligation upon the *Khalifah* and in the same manner is obligatory upon the Muslims; it is reported from Ibn 'Abbas who said: *The Messenger of Allah ﷺ said:*

«لَا ضَرَرَ وَلَا ضِرَارٌ»

“There should be neither harming nor reciprocating harm” (reported by Ahmad from Ibn Abbas and reported and authenticated by Al-Hakim from Abu Sa‘id Al-Khudri), and he رضي الله عنه said:

«مَنْ ضَرَّ أَضَرَّ اللَّهُ بِهِ، وَمَنْ شَاقَ شَقَّ اللَّهَ عَلَيْهِ»

“Whoever harms others, Allah (SWT) will harm him; and whoever causes hardship to other Allah will cause hardship to him.” (reported by Ahmad from Abu Sarmah with a chain that Al-Zayn authenticated, and similarly reported and authenticated by Al-Hakim from abu Sa‘id Al-Khudri). Therefore, what would occur from harm upon the Muslims if there was no provision for what the interest and utility necessitated if there was no recompense must be considered, and it would be obligatory upon the *Khalifah* and the Muslims to ensure it is provided if this provision removed that harm. What made it obligatory upon the *Khalifah* is clear since it is part of managing the affairs, and what made it obligatory upon the Muslims is the generality of the evidences, since the words:

«لَا ضَرَرَ وَلَا ضِرَارٌ»

“There should be neither harming nor reciprocating harm” are general, and in the same way:

«مَنْ شَاقَ»

“**whoever causes hardship**” is general, therefore, encompasses the *Khalifah* and also encompasses all of the Muslims.

As for clause: “d”, its evidence is the evidence of saving the one who is in trouble, since issues like floods and earthquakes and the like, fall under this issue. As for those who may be starving they fall under the narration:

«مَا آمَنَ بِي مَنْ بَاتَ شَبَّعَانَ وَجَاهَهُ جَائِعٌ وَهُوَ يَعْلَمُ»

“One who goes to bed full while he knows that his neighbour is hungry, does not believe in Me” (reported by Al-Bazzar from Anas and considered *Hasan* by Al-Mundhiri), and the narration:

«أَيُّهَا أَهْلُ عَرْصَةٍ»

“**Whoever from the people of a neighborhood**” (reported by Ahmad from Ibn Umar and authenticated by Ahmad Shakir). Therefore, it is obligatory upon the *Bayt Al-Mal* and the Muslims due to the generality of the evidences.

Article 151

Money taken at the borders of the State from custom duties, income derived from public or State property, inheritance for which there is no inheritor and the assets of the apostates are all considered to be part of the revenue of the *Bayt Al-Mal*.

The evidence for the article is what has been reported from Umar (ra) regarding the Muslims taking from the traders of those they were at war with according to what they took from the Muslim traders; it is reported by Ibn Abu Shayba in *Al-Musannaf*: “*from Abu Mijliz – that Omar sent Uthman Bin Hanif who imposed upon the wealth of people of Dhimma that they differed over, a tax of one Dirham from every twenty and wrote to Omar who was content and gave him permission, and he said Omar: How much should we take from the people of war if they come to us? He said: How much do they take from you if you go to them? They said: A tenth. He said: So take the same from them*”.

Abu ‘Ubayd reported in *Al-Amwal* from ‘Abd alRahman Bin Ma’qal who said: I asked Ziyaad Bin Hudair about whom they would take a tenth from. He said: “*We didn’t use to take a tenth from a Muslim, nor from someone who had a covenant. I said: So who did you take the tenth from? He said: The disbelievers from the merchants of war, so we used to take from them as they used to take from us*”. This is an evidence that custom duties which are taken from non-subjects of the State are considered to be from the sources of income of the *Bayt Al-Mal*.

This is with respect to the taxes, as for the wealth which is produced by public property, the *Khalifah* has been made the representative of the Muslims in managing their interests, and so whatever is from the public wealth which all of the individual citizens are able to enjoy, then they are left to them to use as they please, such as rivers and well water which could be used for irrigation. But if the usage of some prevents others, such as steel minerals, which leads to the one who is capable taking it while the one incapable gets nothing of it, then the *Khalifah* takes responsibility for managing this resource and extracting whatever is

there in order to enable all the citizens to benefit from its sale. Accordingly, this wealth is placed in the *Bayt Al-Mal* and is considered to be from its sources of income because the *Khalifah* is the one who manages it. However, it is not spent according to the opinion and *Ijtihad* of the *Khalifah* in everything, since it is for the general citizens, and his opinion and *Ijtihad* is regarding the equality and inequality in expenditure, and not upon who it is paid for, since it is not from the State property.

And as for the wealth which has no inheritor for it, it is placed in the *Bayt Al-Mal*. If an inheritor is found then it is given to them, and if not then it is considered as the property of the *Bayt Al-Mal* because the *Bayt Al-Mal* is the inheritor of anyone who has no inheritor, since the Muslims used to give the inheritance of the one who had no inheritor to the Messenger ﷺ, and he ﷺ used to ask whether the person had any progeny or relatives? And (if he didn't have any) then he ﷺ would order it to be given to whomever he considered, which indicates that it is a source of income for the *Bayt Al-Mal*.

As for the wealth of the apostates, this is considered to be booty for the Muslims and is placed in the *Bayt Al-Mal* in the register of war spoils and *Kharaj*, and is spent upon what they are used for. His wealth is not inherited, since if one of the couple apostatised before consummating the marriage the contract is voided immediately and so there is no inheritance between them, and if the apostasy occurred after consummation then the marriage contract between them is voided, and if either of them die neither of them inherits from the other, since one of them is Muslim and the other a disbeliever. Similarly if the apostate was from those who inherit from a Muslim who died, the apostate does not inherit since he is a disbeliever and the one who left the inheritance is a Muslim, and a disbeliever does not inherit from a Muslim. Accordingly, his share of the remainder of the inheritance, if there

were other inheritors, and if not then all of it is considered as booty for the Muslims, and it is placed in the *Bayt Al-Mal*. If the apostate died and he had inheritors from his sons, father, mother or siblings who were Muslim, they do not inherit from him, since a Muslim does not inherit from a disbeliever and it is all considered to be booty for the Muslims and is placed in the *Bayt Al-Mal* for the Muslims. From Usamah b. Zayd who said: the Messenger of Allah said:

«لَا يَرثُ الْمُسْلِمُ الْكَافِرَ، وَلَا يَرثُ الْكَافِرُ الْمُسْلِمَ»

“A Muslim cannot be the heir of a disbeliever, nor can a disbeliever be the heir of a Muslim.” (agreed upon). And ‘Abd Allah b. Umar said that the Messenger of Allah ﷺ said:

«لَا يَتَوارثُ أَهْلُ مِلَّتِينَ»

“people of two different religions would not inherit from one another.” (reported by Ahmad and Abu Dawud). Similarly if all of his inheritors apostasise with him, all of their wealth has no sanctity and it becomes booty for the Muslims, and they do not inherit from each other.

Article 152

The expenditure of the *Bayt Al-Mal* is divided across six sections:

- a. The eight categories which deserve the *Zakah* to be spent upon them, from the chapter of *Zakah*.
- b. The poor, the needy, the wayfarer, Jihad, and those in debt – if there is nothing found in the chapter of *Zakah*, they are given money from the permanent sources of income of the *Bayt Al-Mal*, and if nothing is found then

those in debt are not given anything. Taxes are imposed in order to fulfil the expenses required for the poor, the needy, the wayfarer, and Jihad, and the State takes a loan in case of fear of *Fasad* (corruption).

- c. The individuals who provide services to the State such as the civil servants, the soldiers and the rulers are paid from the *Bayt Al-Mal*. If there were insufficient funds in the *Bayt Al-Mal* then taxes are imposed in order to fulfil the expenditure needs, and the State takes a loan in case of fear of *Fasad* (corruption).
- d. The essential services and utilities such as roads, mosques, hospitals and schools are funded by the *Bayt Al-Mal*, and if there are insufficient funds in the *Bayt Al-Mal* taxes are imposed to fulfil these expenses.
- e. The non-essential services and utilities are funded by the *Bayt Al-Mal*, and if funds found in the *Bayt Al-Mal* are insufficient then they are not funded, but rather delayed.
- f. Emergency situations such as earthquakes and floods are funded by the *Bayt Al-Mal*, and if the funds were not found the money required is taken as a loan immediately which is then repaid through raised taxes.

The evidence for clause: “a” of this article is the verse of *Sadaqah*, which is the words of Allah (swt):

﴿ إِنَّمَا الْصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسَاكِينِ وَالْعَدِيلِينَ عَلَيْهَا وَالْمُؤْلَفَةُ قُلُوبُهُمْ ﴾
وَفَ أَرِقَابِ وَالْغَرِيمَينَ وَفَ سَبِيلِ اللَّهِ وَأَبْنِ السَّبِيلِ ﴾

“Zakah expenditures are only for the poor and for the needy and for those employed to collect [Zakah] and for bringing hearts together [for Islam] and for freeing captives [or slaves] and for those in debt and for the cause of Allah and for the [stranded] traveller - an obligation [imposed] by Allah. And Allah is Knowing and Wise.” (TMQ 9:60).

As for clause: “b”, it is obligatory upon the *Bayt Al-Mal* to spend upon the poor, the needy, the traveller and *Jihad* whether the money was in the *Bayt Al-Mal* or not, since it is part of what Allah (swt) obligated upon the *Bayt Al-Mal* and the Muslims. Therefore, if the money is not found in the *Bayt Al-Mal* then taxes are imposed upon the Muslims for its sake, because it is obligatory upon them as confirmed by the *Shari’ah* evidences. As for those in debt, they are part of what Allah (swt) obligated upon the *Bayt Al-Mal* and not upon the Muslims. The reason why it is obligatory upon the *Bayt Al-Mal* is due to the words of the Messenger ﷺ:

«أَنَا أَوْلَى بِكُلِّ مُؤْمِنٍ مِّنْ نَفْسِهِ، فَمَنْ تَرَكَ دِيْنًا فَعَلَيَّ، وَمَنْ تَرَكَ مَالًا فَلِيَوْرَثَتِهِ»

“I am nearer to every believer than himself, If he leaves a debt, it is upon me. However, if he leaves an estate, it belongs to his heirs.” (reported by Muslim from Jabir), and it was upon him ﷺ in his ﷺ characteristic as the Head of the State, and so it is part of what Allah (swt) obligated upon the *Bayt Al-Mal*. It is reported from Abu Hurayrah that the Prophet ﷺ said:

«فَإِيمَانًا مُؤْمِنٍ مَاتَ وَتَرَكَ مَالًا فَلَيْرِثُهُ عَصَبَتُهُ مَنْ كَانُوا، وَمَنْ تَرَكَ دِيْنًا أَوْ ضَيْعَةً فَلِيَتَّابُنِي فَأَنَا مَوْلَاهُ»

“if a true believer dies and leaves behind some property, it will be for his inheritors, and if he leaves behind some debt to be paid or needy offspring, then they should come to me as I am the

guardian of the deceased." (reported by Al-Bukhari). Accordingly the debt is upon the *Bayt Al-Mal*. If there was wealth in the *Bayt Al-Mal* it is obligatory to spend it, and if no funds were found, then no taxes would be imposed, since there is nothing to indicate that it is an obligation upon the Muslims. In the explanation of *Sahih Muslim* by Al-Nawawi it is said that:

(أن النبي ﷺ كان لا يصلی على من مات، وعليه دین لم يختلف به وفاء، لئلا
يتتساهم الناس في الاستدانا ويهملوا الوفاء، فزجرهم على ذلك بترك الصلاة عليهم، فلما فتح
الله على المسلمين مبادى الفتوح قال ﷺ: «مَنْ تَرَكَ دِيْنًا فَعَلَيْهِ» أي قضاوه، فكان
يقضيه)

“The Prophet did not use to pray over anyone who died with a debt that he did not manage to fulfil, lest that people would not be careless in taking debts and neglect repayment, and so He would rebuke them by not praying over them. When Allah opened the conquests for the Muslims, He ﷺ said: ‘whoever left behind a debt, it is upon me.’ in other words, to fulfil it, and he used to fulfil them.” which is evidence that it is paid from the *Bayt Al-Mal* if the money is found.

As for clause: “c”, the evidence is what has been mentioned that Allah (swt) obligated education, judging and *Jihad* upon the Muslims, and He (swt) obligated establishing the *Khalifah* upon them, and made it obligatory upon the *Khalifah* to govern the affairs with whatever that necessitates in terms of rulers and civil servants, and for those to be able to fulfil their obligations it is necessary for the *Bayt Al-Mal* to give the civil servants their salaries, and the rulers their compensations, from the rule: “*Whatever is required to complete an obligation is itself an obligation*”. If whatever is in the *Bayt Al-Mal* is not sufficient, then taxes are collected in order to meet these expenses, and if it is

feared that instability/corruption (*Fasad*) could occur then loans can be taken to fulfil the need.

As for clause: “d”, in order to reach its evidence it is necessary to understand in detail that the evidence to fund the obligatory expenditures on the benefits and utilities where no alternative exists is that it is part of the management of the affairs, and the narration says:

«وَهُوَ مَسْئُولٌ عَنْ رَعْيِهِ»

“*and he is responsible for his subjects*” (reported by Al-Bukhari from Ibn Umar), and the fact that the *Ummah* would be afflicted by harm in the absence of it being carried out and the Messenger ﷺ said:

«لَا ضَرَرٌ وَلَا ضَرَارٌ»

“*No causing harm and no harming*” (reported by Ahmad from Ibn ‘Abbas, and reported and authenticated by Al-Hakim from Abu Sa’id Al-Khudri). Accordingly, these are the evidence for the obligation upon the *Khalifah* for the interest and utilities, which is why it is obligatory upon him in an absolute sense whether they were from the essentials or non-essentials. The evidence for their obligation upon the Muslims are the words: “*No causing harm and no harming*”, which is why the non-essential interests are not obligatory upon them since the *Ummah* would not be afflicted with harm if they were not undertaken, and nothing is obligatory upon the *Ummah* except that which would cause a harm if it was not undertaken.

Accordingly, not every interest and utility is obligatory upon the Muslims, rather only those interests which would cause harm if they were not undertaken. As for the *Bayt Al-Mal*, it is obligatory for it to undertake every issue which brings benefit for the

Muslims, and everything which, if left without being undertaken, would cause them harm. Due to the restriction of the evidence of its obligation upon the *Ummah* with the narration: “***There should be neither harming nor reciprocating harm***”, taxes are not imposed upon the Muslims in order to undertake the non-essential interests and utilities such as widening the roads which are sufficient for the people without the widening or building a hospital that could be managed without, and anything else similar from non-essential interests. If the money is found in the *Bayt Al-Mal* the State would undertake them, and if not they would be delayed until the money is found, and it is not correct for taxes to be imposed for the sake of undertaking them.

As for clause: “f”, its evidence is the evidence for saving the one in trouble: in an agreed upon narration from Abu Musa Al-Ash’ari, that the Prophet ﷺ said:

«عَلَى كُلِّ مُسْلِمٍ صَدَقَةٌ، فَقَالُوا: يَا نَبِيَّ اللَّهِ، فَمَنْ لَمْ يَجِدْ؟ قَالَ: يَعْمَلُ بِيَدِهِ فَيَنْفَعُ نَفْسَهُ وَيَتَصَدَّقُ، قَالُوا: إِنْ لَمْ يَجِدْ؟ قَالَ: يُعِينُ ذَا الْحَاجَةِ الْمُلْهُوفَ، قَالُوا: إِنْ لَمْ يَجِدْ؟ قَالَ: فَلَيَعْمَلَ بِالْمَعْرُوفِ وَلْيُمْسِكْ عَنِ الشَّرِّ، فَإِنَّهَا لَهُ صَدَقَةً»

“*Every Muslim has to give in charity. The people asked, "O Allah's Prophet! If someone has nothing to give, what will he do?" He said, "He should work with his hands and benefit himself and also give in charity (from what he earns)." The people further asked, "If he cannot find even that?" He replied, "He should help the needy who appeal for help." Then the people asked, "If he cannot do that?" He replied, "Then he should perform good deeds and keep away from evil deeds and this will be regarded as charitable deeds."*””

And in the same way, the agreed upon narration from Ibn Umar that the Messenger of Allah ﷺ said:

«الْمُسْلِمُ أَخُو الْمُسْلِمِ لَا يَظْلِمُهُ وَلَا يُنْلِمُهُ، وَمَنْ كَانَ فِي حَاجَةٍ أَخِيهِ كَانَ اللَّهُ فِي حَاجَتِهِ، وَمَنْ فَرَّجَ عَنْ مُسْلِمٍ كُرْبَةً فَرَّجَ اللَّهُ عَنْهُ كُرْبَةً مِنْ كُرْبَاتِ يَوْمِ الْقِيَامَةِ، وَمَنْ سَرَّ مُسْلِمًا سَرَّهُ اللَّهُ يَوْمَ الْقِيَامَةِ»

“A Muslim is a brother of another Muslim. So he should not oppress him nor should he hand him over to. Whoever fulfills the needs of his brother, Allah will fulfill his needs; whoever removes the troubles of his brother, Allah will remove one of his troubles on the Day of Resurrection; and whoever covers up the fault of a Muslim, Allah will cover up his fault on the Day of Resurrection”.

This is general encompassing both the *Khalifah* as well as the rest of the Muslims, and so it is obligatory upon the *Bayt Al-Mal* and upon the Muslims. If sufficient funds are found in the *Bayt Al-Mal* then they are spent upon from there, and if there were not sufficient funds found then taxes are collected for its sake because it is obligatory upon the Muslims to help those in trouble.

With respect to the taking out of loans in a situation where corruption (*Fasad*) is feared, as mentioned in clauses: “b” and: “c” and: “f”, this is because corruption is a harm afflicting the Muslims, and its removal would be obligatory due to the narration:

«لَا ضَرَرَ وَلَا ضَرَارٌ»

“There should be neither harming nor reciprocating harm”. So, if the funds were not available, and loans were not taken out, and waiting for the money could cause harm, then it would be obligatory to take out a loan to remove the harm. It would then be necessary for the State to take a loan for the amount required to remove the harm. It is not permitted to take out a loan for the sake of anything other than these three situations, because spending in

other situations depends on the presence of funds, but if the funds are not present money should not be borrowed for it. As for anything which is entitled to funds whether or not they were found in the *Bayt Al-Mal*, then if the funds are found they are spent upon it, and if they are not found then they are sought through taking taxes from the Muslims in order to fulfil what is required. This occurs if it is possible to wait and no harm occurs due to waiting, and so it is delayed until the taxes have been collected, and if it cannot be waited for and the people would be afflicted with harm due to any delay then at that time a loan would be taken out for its sake. So accordingly the State would not take out a loan except for the situations which would cause harm if nothing was spent, which are those situations and things whose entitlement to funds remains whether the funds were found or not.

Article 153

The State guarantees to create work for all of those who carry its citizenship.

The evidences for this article is that it is part of the generality of the words of the Prophet ﷺ:

«الإِمَامُ رَاعٍ وَهُوَ وَمَسْنُوْلٌ عَنْ رَعِيَّتِهِ»

“The Imam is a guardian and he is responsible for his subjects” (reported by Al-Bukhari from ‘Abd Allah b. Umar), and from the most important issues of managing the affairs is creating work for those who are capable but do not find any. The fact that maintenance of the poor person who has no relative capable of maintaining them is upon the State is due to his ﷺ words:

«مَنْ تَرَكَ مَالًا فَلَوْزَتِهِ، وَمَنْ تَرَكَ كَلَّا فَإِلَيْنَا»

“If somebody (dies among the Muslims) leaving some property, the property will go to his heirs; and if he leaves dependants (orphans), we will take care of them.” (agreed upon from Abu Hurayrah). And in the narration of Abu Hurayrah:

«وَمَنْ تَرَكَ مَالًا فَلَيْسُ بِهِ عَصَبَةٌ مَنْ كَانُوا، وَمَنْ تَرَكَ دِينًا أَوْ صَيْاعًا فَلِيُأْتِيَ فَانًا
«مَوْلَاهُ»

“If a believer leaves some property then his relatives will inherit that property; but if he is in debt or he leaves poor children, let those (creditors and children) come to me, for them I am his sponsor (surely)” (agreed upon, and the wording is from Al-Bukhari).

The State ought to secure jobs for those whom she is bound to spend on for their living. Ibn Maja reported from Anas Bin Malik who said:

«أَنَّ رَجُلًا مِنَ الْأَنْصَارِ جَاءَ إِلَى النَّبِيِّ ﷺ يَسْأَلُهُ فَقَالَ: لَكَ فِي بَيْتِكَ شَيْءٌ؟ قَالَ:
بَلَى، حِلْسُ نَبِيْسُ بَعْضُهُ وَبَسْطُ بَعْضُهُ وَقَدْحٌ تَسْرُبُ فِيهِ الْمَاءُ، قَالَ: ائْتِنِي بِهِمَا، قَالَ: فَأَتَاهُ
بِهِمَا، فَأَخْذَهُمَا رَسُولُ اللَّهِ ﷺ يَبْدِيُهُ ثُمَّ قَالَ: مَنْ يَشْتَرِي هَذِينَ؟ فَقَالَ رَجُلٌ: أَنَا آخْذُهُمَا
بِدِرْهَمٍ، قَالَ: مَنْ يَرِيدُ عَلَى دِرْهَمٍ مَرَّيْبِنْ أَوْ ثَلَاثَةَ دِرْهَمٍ، قَالَ رَجُلٌ: أَنَا آخْذُهُمَا بِدِرْهَمَيْنِ، فَأَعْطَاهُمَا
إِيَّاهُ وَأَخْذَ الدِّرْهَمَيْنِ فَأَعْطَاهُمَا الْأَنْصَارِيَّ وَقَالَ: اشْتَرِ بِأَخْدِهِمَا طَعَامًا فَانْبَذْهُ إِلَى أَهْلِكَ، وَاشْتَرِ
بِالآخِرِ قَدْوَمًا فَأَتَنِي بِهِ، فَفَعَلَ، فَأَخْدَهُ رَسُولُ اللَّهِ ﷺ فَشَدَّ فِيهِ عُودًا يَبْدِي وَقَالَ: ادْهَبْ
فَأَخْحَطِبْ وَلَا أَرَاكَ خَمْسَةَ عَشَرَ يَوْمًا، فَجَعَلَ يَخْحَطِبْ وَيَبْيَعُ، فَجَاءَ وَقَدْ أَصَابَ عَشْرَةَ دِرَاهِمَ،
فَقَالَ اشْتَرِ بِيَعْضِهَا طَعَامًا وَبِيَعْضِهَا نُوبَأً، ثُمَّ قَالَ: هَذَا خَيْرٌ لَكَ مِنْ أَنْ تَجْيِي وَالْمَسْأَلَةُ نُكْنَةٌ

فِي وَجْهِكَ يَوْمَ الْقِيَامَةِ، إِنَّ الْمَسْأَلَةَ لَا تَصْلُحُ إِلَّا لِذِي فَقْرٍ مُدْعِيًّا أَوْ لِذِي عُرْجٍ مُعْظِلِّيًّا أَوْ دَمِ
مُوِّجِعِيًّا

“A man of the Ansar came to the Prophet ﷺ and begged from him. He (the Prophet) asked: Have you nothing in your house? He replied: Yes, a piece of cloth, a part of which we wear and a part of which we spread (on the ground), and a wooden bowl from which we drink water. He said: Bring them to me. He then brought these articles to him and he (the Prophet) took them in his hands and asked: Who will buy these? A man said: I shall buy them for one Dirham. He said twice or thrice: Who will offer more than one Dirham? A man said: I shall buy them for two Dirhams. He gave these to him and took the two Dirhams and, giving them to the Ansari, he said: Buy food with one of them and hand it to your family, and buy an axe and bring it to me. He then brought it to him. The Messenger of Allah ﷺ fixed a handle on it with his own hands and said: Go, gather firewood and sell it, and do not let me see you for a fortnight. The man went away and gathered firewood and sold it. When he had earned ten Dirhams, he came to him and bought a garment with some of them and food with the others. The Messenger of Allah ﷺ then said: This is better for you than that begging should come as a spot on your face on the Day of Judgment. Begging is right only for three people: one who is in grinding poverty, one who is seriously in debt, or one who is responsible for compensation and finds it difficult to pay.” Al-Tirmidhi reported a shorter version that he considered Hasan from Anas Bin Malik:

«أَنَّ رَسُولَ اللَّهِ ﷺ بَاعَ حِلْسًا وَقَدْحًا وَقَالَ: مَنْ يَشْرِي هَذَا الْحِلْسَ وَالْقَدْحَ؟
 فَقَالَ رَجُلٌ: أَخْدُثُهُمَا بِدِرْهَمٍ، فَقَالَ النَّبِيُّ ﷺ مَنْ يَرِيدُ عَلَى دِرْهَمٍ؟ مَنْ يَرِيدُ عَلَى دِرْهَمٍ؟
 فَأَعْطَاهُ رَجُلٌ دِرْهَمَيْنِ فَبَاعَهُمَا مِنْهُ»

“That the Messenger of Allah (saw) sold a saddle blanket and a drinking bowl. He (saw) said: "Who will buy saddle blanket and drinking bowl?". So a man said: "I will take them for a Dirham." So the Prophet (saw) said: "Who will give more than a Dirham? Who will give more than a Dirham?" A man agreed to give him two Dirham, so he sold them to him.” And it has been reported in the narration of Ibn Maja that the Messenger ﷺ said:

«قَالَ: مَنْ يَرِيدُ عَلَى دِرْهَمٍ مَرَّهَيْنِ؟»

“Who will pay more than a Dirham twice?” and in the narration of Al-Tirmidhi the Messenger ﷺ said:

«مَنْ يَرِيدُ عَلَى دِرْهَمٍ؟ مَنْ يَرِيدُ عَلَى دِرْهَمٍ؟»

“who will pay more than a Dirham? Who will pay more than a Dirham” or in other words, the sale was completed through the auction.

So the Messenger of Allah ﷺ dealing with employment directly in his ﷺ capacity as the head of the State means that the State has to provide work for those unemployed.

Above that, the maintenance from the *Bayt Al-Mal* is due for the one who is incapable, both practically and legally. The one who is practically incapable is the person unable to work. The one who legally has the rule of the one who is incapable though is not practically incapable, is the person able to work but unable to find it, and so he is considered incapable in the eye of the law, and it is

obligatory to give him maintenance. Therefore, providing work for the one who is considered incapable from the view of the law is exactly like providing maintenance for the practically incapable person. Additionally, the *Shari'ah* forbade asking, in other words, begging, and permitted it from the authority in other words, the State; it is reported from Abu Hurayrah who said: “*The Messenger of Allah ﷺ said:*

«كُلُّ يَكْدُ بِهَا الرَّجُلُ وَجْهُهُ إِلَّا أَنْ يَسْأَلَ الرَّجُلُ سُلْطَانًا أَوْ فِي أَمْرٍ لَا بُدَّ مِنْهُ»

“(Begging) is a cut that a person inflicts upon his face; except for asking a ruler, or under the stress of circumstances from which there is no escape.” reported by Al-Tirmidhi and Al-Nasa’i, Al-Tirmidhi said it is *Hasan Sahih*, and Ahmad reported something similar which Al-Zayn authenticated, which is proof that it is permitted to ask the authority, in other words, the State, and this means that she is responsible for him and for his maintenance, or securing a job/work for him.

Article 154

Company employees and those employed by individuals have the same rights and duties as employees of the State. Everyone who works for a wage, irrespective of the nature of the work, is considered an employee. In matters of dispute between employers and employees over salary levels, the salary level is to be assessed on the basis of the market. If they disagree over something else, the employment contract is to be assessed according to the rules of the *Shari'ah*.

Its evidence is the evidence for hiring, since the employee is hired; Allah (swt) said:

﴿فَإِنْ أَرْضَعْنَ لَكُمْ فَئَاتُوهُنَّ أُجُورَهُنَّ﴾

“And if they breastfeed for you, then give them their payment.” (TMQ 65:6), and the Prophet ﷺ said in a *Qudsi* narration:

«قَالَ اللَّهُ: تَلَاهَتْ أَنَا حَصْمُهُمْ يَوْمَ الْقِيَامَةِ»

“Allah said: I am the opponent of three on the Day of Resurrection” until he said:

«وَرَجُلٌ اسْتَأْجَرَ أَجِيرًا فَاسْتَوْفَى مِنْهُ وَلَمْ يُعْطِ أَجْرَهُ»

“and a man who hires a worker, makes use to him, then does not give him his wages.” (reported by Al-Bukhari from Abu Hurayrah).

If the salary was not known, the contract of employment is legitimately contracted and if there is a dispute over its value then its calculation is referred to the market value. So, if the salary is not mentioned in the employment contract, or if the employee and employer differed over the mentioned salary, then the market salary level is referred to, and that is analogous to the issue of marriage dowry. When the dowry is not explicitly mentioned, or there is a dispute over it, then the custom is the referee. This is based upon what was reported by Al-Nisa'i and Al-Tirmidhi who said it was *Hasan Sahih*:

«عَنْ ابْنِ مَسْعُودٍ أَنَّهُ سُئِلَ عَنْ رَجُلٍ تَزَوَّجُ امْرَأَةً وَمَمْ يَفْرِضُ لَهَا صَدَاقًا وَمَمْ يَدْخُلُ بِهَا حَيَّ مَاتَ، فَقَالَ ابْنُ مَسْعُودٍ: لَهَا مِثْلُ صَدَاقِ نِسَائِهَا لَا وَكْسَ وَلَا شَطَطَ، وَعَلَيْهَا العِدَّةُ وَلَهَا

الميراث، فَعَلَمَ مَعْقِلُ بْنُ سِنَانٍ الْأَشْجَعِيُّ فَعَالَ: قَضَى رَسُولُ اللَّهِ ﷺ فِي بِرْقَعَ بِنْتِ وَاشِقِ امْرَأَةً
مِنَّا مِثْلَ الَّذِي قَضَيْتَ، فَفَرَحَ بِهَا ابْنُ مَسْعُودٍ»

"Ibn Mas'ud was asked about a man who married a woman and he did not stipulate the dowry for her, and he did not enter into her until he died. So Ibn Mas'ud said: "She gets the same dowry as other women, no less and no more, she has to observe the Iddah, and she gets inheritance." So Ma'qil bin Sinan Al-Ashja'I stood and said: "The Messenger of Allah judged the same as you have judged regarding Birwa Bint Washiq, a woman of ours." So Ibn Mas'ud was happy about that", and the meaning of his words: "she has the dowry of her women" is in other words, the dowry similar to women like her. So the Shari'ah made the dowry of someone similar obligatory for the one whose dowry was not mentioned, and the same occurs if there was a dispute over the dowry mentioned. As the dowry is a necessary exchange upon which the marriage contract is based, every type of necessary exchange upon which a contract is based is made analogous to it, without looking at what is given for this compensation, whether it was money as in a sale, or a benefit or effort as in employment or a gift as in the marriage contract.

Article 155

The salary is to be determined according to the benefit of the work, or the benefit of the employee, and not according to the knowledge and/or qualifications of the employee. There have to be no annual increments for employees. Instead, they have to be given the full value of the salary they deserve for the work they do.

The evidence for the article is the *Shari'ah* definition of hiring, because the *Shari'ah* definition is a *Shari'ah* rule which is the same as a *Shari'ah* principle because it is deduced from a *Shari'ah* evidence or evidences through a correct *Ijtihad*. Accordingly, it is considered an evidence for the issue that it applies to in the same manner that the *Shari'ah* rule is considered an evidence for the issue that it applies to, and the *Shari'ah* text is considered in both of these situations to be an evidence for the *Shari'ah* rule which applies to the issue, or for the *Shari'ah* definition that applies to the issue. The *Shari'ah* definition of hiring is: "*a contract upon an exchange of a service for remuneration*", and the service in the case of the employee is either the service of work that he carries out, such as an engineer, or a personal service such as the servant; these two types of services are the ones that the contract can apply to, and it is not correct that anything else has a contract upon it. From this, it is seen that the contract cannot apply to the service of the level of knowledge, or amount of qualifications, but rather upon the service of the employee, either by providing personal service or his work. The salary is in exchange for this service that the contract applies on, and for this reason what is termed as the grade of civil servant, in other words, how the value of the salary is set, is not done in accordance with the qualification or knowledge, but rather it is only set according to the person themselves if they were going to undertake the work themselves such as a servant, or according to the use of the work they were doing and their experience such as an engineer, and nothing else, because this is in harmony with the definition.

Article 156

The State has to guarantee the living expenses of the one who has no money, no work and no relatives responsible for his

financial maintenance. The State is responsible for housing and maintaining the disabled and handicapped people.

The evidence for this article is what was mentioned as evidence in article 153, which was the words of the Messenger ﷺ:

«مَنْ تَرَكَ مَالًا فَلِوَرِثَتِهِ، وَمَنْ تَرَكَ كَلَّا فَلِيَنَا»

“If somebody dies (among the Muslims) leaving some property, the property will go to his heirs; and if he leaves dependants (orphans), we will take care of them.” (agreed upon from Abu Hurayrah), and the *kall* is the weak, and encompasses the poor, anyone incapable and the physically disabled. And the words of the Messenger ﷺ:

«وَمَنْ تَرَكَ دِينًا أَوْ ضَيْعًا فَلِيُّنَاهُ فَإِنَّا مَوْلَاهُ»

“and if he leaves behind some debt to be paid or needy offspring, then they should come to me as I am the guardian of the deceased.” (agreed upon from Abu Hurayrah), encompass everyone left at a loss or in perdition including the poor, incapable, physically disabled and the like.

Article 157

The State works to circulate the wealth amongst the subjects, and prevents it from circulating solely amongst a particular sector of society.

The evidence is the verse from Surah Al-Hashr, the words of Allah (swt):

﴿كَيْ لَا يَكُونَ دُولَةٌ بَيْنَ الْأَغْنِيَاءِ مِنْكُمْ﴾

“So that it will not be a perpetual distribution among the rich from among you.” (TMQ 59:7), and so this gave the reason (*Illah*) as to why the booty from *Bani Al-Nadeer* was given to the emigrants rather than to the supporters (*Ansar*) from Madinah, even though they were all Muslims, and no one from the *Ansar* apart from two poor men, Abu Dajannah and Sahl b. Hanif, were given anything. The reason given was in order that the wealth did not circulate amongst the rich alone, and this is a *Shari’ah Illah* which is present and absent according to the presence and absence of its cause. Accordingly, any time that a disparity is present, the *Khalifah* must work to achieve balance by putting this verse into practice, because from one angle it has an *Illah* present, and also because its words are general even though the reason for the verse was specific, and the *Shari’ah* principle is:

(العبرة بعموم اللفظ لا بخصوص السبب)

“the consideration is given to the generality of the words and not to the specificity of the cause”, and so it is applicable at all times.

Article 158

The State makes it easier for all the citizens to be able to satisfy their extra (non-essential) needs, and to achieve equality in society in the following way:

- a. By giving out liquid and fixed assets from the funds of the *Bayt Al-Mal‘* and from the war booties, and anything similar.

- b. Donating some of its cultivated land to those who have insufficient land. Those who possess land but do not use it are not given more. Those who are unable to cultivate their land are given financial assistance to enable them to cultivate it.**
- c. Giving help to those unable to repay their debts by providing funds from the *Zakah*, and the war booty, and anything similar.**

The evidence for clause: “a” is that Allah (swt) gave the wealth of the *Bani Al-Nadir* to the Prophet ﷺ in order for him to give it to whom he wished, and the Messenger ﷺ gave it specifically to the emigrants rather than the *Ansar*, and did not give any of the *Ansar* anything apart from two men from amongst them. The wealth of *Bani Al-Nadir* was part of the booty, and similar to the booty is the rest of the wealth which is derived from fixed sources such as the land tax, because its expenditure has been placed under the responsibility of the *Imam* to spend according to his opinion and *Ijtihad*, except for if the text came explaining where it should be spent such as the expenditures of *Zakah*, in which case it would not be allowed to spend it except upon whatever the text mentioned. This is only with respect to the fixed sources of income, but as for the wealth collected from the taxes upon the Muslims, it cannot be given out because the text was regarding the booty and analogy upon it is made with anything similar, which are the fixed sources of income for the *Bayt Al-Mal*.

As for clause: “b” its evidence is the action of the Messenger ﷺ when dividing the land; it is reported from Amrf Bin Hareeth who said:

«خَطَّ لِي رَسُولُ اللَّهِ دَارًا بِالْمَدِينَةِ بِقُوْسٍ وَقَالَ: أَزِيدُكَ أَزِيدُكَ»

“The Messenger of Allah ﷺ demarcated a house with a bow at Medina for me. He said: I shall give you more. I shall give you more.” (reported by Abu Dawud and he considered it *Hasan*), and in a narration reported by Ahmad and authenticated by Al-Zayd and also reported by Al-Bayhaqi, with both of them through ‘Alqamah b. Wa’il from his father:

«أَنَّ رَسُولَ اللَّهِ ﷺ أَقْطَعَهُ أَرْضًا، قَالَ: فَأَرْسَلَ مَعِي مُعَاوِيَةً أَنْ أَعْطِهَا إِيَّاهُ، أَوْ قَالَ أَعْلَمُهَا إِيَّاهُ». وقد «سَأَلَ تَمِيمُ الدَّارِيُّ رَسُولَ اللَّهِ ﷺ أَنْ يُنْقِطَعَ عَيْنُونَ، الْبَلْدُ الَّذِي كَانَ مِنْهُ بِالشَّامِ قَبْلَ فَتْحِهِ، وَهُوَ مَدِينَةُ الْخَلِيلِ، فَأَقْطَعَهُ إِيَّاهَا ﷺ»

“That the Prophet ﷺ assigned him some land in Hadramout as fief, He said: he sent Mu’awiyah in order to give it to him”. And: *“Tamim Al-Dari asked the Messenger of Allah ﷺ to assign him parts of the land that used to belong to him in Al-Sham before it was conquered, which was the city of Al-Khalil, and so the Messenger ﷺ granted it to him”* (reported by Abu ‘Ubayd in *Al-Amwal* and Abu Yusuf in *Al-Kharaj*). Another evidence is what Umar Bin Al-Khattab (ra) did in giving the farmers of Iraq some money from the *Bayt Al-Mal* in order for them to cultivate their land, and the companions remained silent over it, and so it is considered an *Ijma’*.

As for clause: “c”, its evidence is what Allah (swt) mentioned regarding the *Zakah* wealth with His (swt) words:

﴿وَالْغَرِيمِينَ﴾

“And for those in debt” (TMQ 9:60), and the words of the Messenger ﷺ:

«أَنَا أَوَى بِكُلِّ مُؤْمِنٍ مِنْ نَعْسِيهِ، فَمَنْ تَرَكَ دِينًا فَعَلَيَّ، وَمَنْ تَرَكَ مَالًا فِلَوْرَثَتِهِ»

“I am nearer to every believer than himself, If he leaves a debt,it is upon me. However, if he leaves an estate, it belongs to his heirs.” (reported by Muslim from Jabir), and the *Shari’ah* ordained that the wealth from the booty can be spent by the *Imam* according to his opinion and *Ijtihad*, which could include repaying the debts.

Article 159

The State supervises agricultural affairs and its produce in accordance with the needs of the agricultural policy which is to achieve the potential of the land to its greatest level of production.

Its evidence is the words of the Prophet ﷺ:

«الإِمَامُ رَاعٌ وَهُوَ وَمَسْؤُولٌ عَنْ رَعْيَتِهِ»

“The Imam is a guardian and he is responsible for his subjects” (reported by Al-Bukhari from ‘Abd Allah b. Umar), and supervising the general agricultural affairs is part of managing the affairs, which is why it is part of the obligation of management upon the *Imam*. However, the State does not undertake the agricultural affairs directly, because the Messenger ﷺ left it to the Muslims; he said in the narration regarding the pollination of the trees:

«أَنْتُمْ أَعْلَمُ بِأُمُورِ دُنْيَاكُمْ»

“You have better knowledge (of a technical skill) in the affairs of the world.” (reported by Muslim from Aisha(ra) and Anas. Ibn Hazm reported it in *Al-Ihkam* with his own chain and authenticated to Aisha(ra) and Anas that the Prophet (saw) said:

«أَنْتُمْ أَعْلَمُ بِأُمُورِ دُنْيَاكُمْ»

“You have better knowledge (of a technical skill) in the affairs of the world”.

In another report from Anas:

«أَنَّ النَّبِيَّ ﷺ مَرَّ بِقَوْمٍ يُلْفَحُونَ، فَقَالَ: لَوْلَا مَنْ تَفَعَّلُوا لَصَالَحٌ. قَالَ: فَخَرَجَ شِيشَاً، فَمَرَّ بِهِمْ فَقَالَ: مَا لِنَخْلِكُمْ؟ قَالُوا: قُلْتَ كَذَّا وَكَذَا، قَالَ: أَنْتُمْ أَعْلَمُ بِأُمُورِ دُنْيَاكُمْ»

“The Prophet ﷺ happened to pass by the people who had been busy in grafting the trees. Thereupon he said: If you were not to do it, it might be good for you. (So they abandoned this practice) and there was a decline in the yield. He (the Holy Prophet) happened to pass by them (and said): What has gone wrong with your trees? They said: You said so and so. Thereupon he said: You have better knowledge (of a technical skill) in the affairs of the world”. And in the report with Ahmad from Anas, the Messenger of Allah ﷺ said:

«إِذَا كَانَ شَيْءٌ مِنْ أُمُورِ دُنْيَاكُمْ فَأَنْتُمْ أَعْلَمُ بِهِ، فَإِذَا كَانَ مِنْ أُمُورِ دِينِكُمْ فَإِلَيَّ»

“If it is something from your worldly affairs, then you are more knowledgeable about it, and if it is from the issues of the Deen, then come to me”. This indicates that the State does not directly supervise the agriculture, nor undertake it, but rather undertakes general supervision by organising what is permitted according to the various styles which are selected in order to increase and strengthen the agriculture, facilitating it to ease any issues, as well as planning an agricultural policy which would lead to raising the production levels.

Article 160

The State supervises the whole affairs of industry. It directly undertakes those industries which are connected to whatever is part of the public property.

This article has two halves: firstly, supervision over the whole of industry; secondly, directly undertaking some of the industrial affairs. As for the first half its evidence is that the Messenger ﷺ consented to private ownership of factories such as those for shoes, swords, clothes and other things:

«أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَاٰلِهٖ وَسَلَّمَ اصْنَعَ خَاتَمًا»

“The Prophet ﷺ had a ring made for him” (reported by Al-Bukhari from ‘Abd Allah Bin Umar) and:

«أَنَّ اللَّهَ أَسْتَحْسَنَ لِلْبَرِّ»

“He ﷺ had a pulpit made” (reported by Al-Bukhari from Sahl Bin Sa’d Al-Sa’idi). This indicates that factories are run by private individuals and not the State. Therefore, it is not different to agriculture. However, it is part of the managing of the affairs that Allah (swt) obligated upon the State with the words of the Prophet ﷺ:

«الإِمَامُ رَاعٌ وَهُوَ وَمَسْؤُولٌ عَنْ رَعِيَّتِهِ»

“The Imam is a guardian and he is responsible for his subjects” (reported by Al-Bukhari from ‘Abd Allah Bin Umar), and so the State has to generally supervise the industrial issues by organising what is permitted according to the various styles which would assist the advancement of production, and by opening

markets for it, and making sure raw materials are available, and so on.

As for the second half, the evidence for it is the *Shari'ah* principle: “*The factory takes the rule of what it produces*”; it is reported from Anas that:

«لَعْنَ اللَّهِ الْحُمْرَ وَشَارِبِهَا وَسَاقِيَهَا وَبَائِعَهَا وَمُبْتَاعَهَا وَعَاصِرَهَا وَمُعْتَصِرَهَا وَحَامِلَهَا
وَالْمَحْمُولَةُ إِلَيْهِ»

“*Allah has cursed wine, its drinker, its server, its seller, its buyer, its presser, the one for whom it is pressed, the one who conveys it, and the one to whom it is conveyed.*” (reported by Abu Dawud from Ibn Umar and authenticated by Ibn Al-Sakn). And so the production of pressing the grapes for alcohol was prohibited by the Messenger ﷺ because it produces alcohol, even though pressing is permitted; so the production took the rule of the material that it produced, and this is general. Based upon this, the factory takes the rule of the material it produces, and so the factories that produce anything considered part of public property are part of public property, since they take the rule of what they produce.

Public property belongs to all the Muslims, and it is not allowed for an individual or group of individuals to independently own it such that others are prevented from its ownership. From this understanding, the *Khalifah* is the one who manages these factories and prevents private ownership of them, since private ownership would prevent others from being able to gain ownership, and, therefore, the State has to directly manage the factories which are part of public property, such as those for oil extraction, steel and gold mining and so on. However, it is treated as a specific interest in terms of its income, expenditure and the rest of its affairs, and its profits are placed in the *Bayt Al-Mal* in a section specified for it,

since it is not considered to be part of the State property, but rather part of public property.

Article 161

Foreign trade is assessed on the basis of the citizenship of the trader and not the origin of the goods. Merchants from countries in a state of war with the State are prevented from trading in the State, unless given a special permission for the merchant or the goods. Merchants from countries that have treaties with the State are treated according to the terms of the treaties. Merchants who are subjects of the State are prevented from exporting any goods that the country needs, or any goods which strengthen the enemy militarily, industrially or economically. However, they are not prevented from importing any property they own. Countries with whom there is a real war between us and their people (such as Israel) are excluded from these rules, since in all relationships with them they take the rules of the actual belligerent countries, whether those rules were linked to trade or not.

This encompasses three issues: firstly: the merchandise is assessed on the basis of the citizenship of the trader, not its origin; secondly: the rules regarding the trader differ according to their citizenship; thirdly: the circumstances in which import and export are forbidden.

As for the first issue: the evidence is that the *Shari'ah* rules related to the foreign merchants are the rules of trade, and the rules of entering property from the domain of war (*Dar Al-Harb*) into the domain of Islam (*Dar Al-Islam*), and taking property out of *Dar Al-Islam* into *Dar Al-Harb*, and the rules regarding strengthening the

enemies against the Muslims. The *Shari'ah* rule is the address of the Legislator (swt) connected to the actions of the worshipper, which is why foreign trade is connected to the trader and not to the origin of the goods, since the rules of the *Shari'ah* connected to foreign trade were only revealed with respect to individuals. The revealed rule connected to property is only connected to it from the angle of it being owned by a specific individual, not only from the angle that it is property. In other words, in consideration that it is property owned by a specific person and not only in consideration that it is a property. Accordingly, the rules connected to foreign trade are the rules connected to the individuals from the angle that the *Shari'ah* looks at them and their wealth, in other words, from the angle of the rule of Allah (swt) regarding them, and from the angle that the rule of Allah (swt) is in the wealth which is owned by them. From here it is seen that the rules of foreign trade are not connected to the origin of the goods but rather to the merchant.

As for the second issue, it is reported from the narration of Sulaiman Bin Buraydah from his father regarding the instruction of the Messenger ﷺ for the leaders of the armies that the Messenger ﷺ said to the leader:

«... ادْعُهُمْ إِلَى الإِسْلَامِ، فَإِنْ أَجَابُوكَ فَأَقْبِلْ مِنْهُمْ وَكَفَ عَنْهُمْ، ثُمَّ ادْعُهُمْ إِلَى التَّحْوُلِ مِنْ دَارِهِمْ إِلَى دَارِ الْمُهَاجِرِينَ، وَأَخْبِرْهُمْ أَنَّهُمْ إِنْ فَعَلُوا ذَلِكَ فَلَهُمْ مَا لِلْمُهَاجِرِينَ وَعَلَيْهِمْ مَا عَلَى الْمُهَاجِرِينَ، فَإِنْ أَبَوَا أَنْ يَتَحَوَّلُوا مِنْهَا فَأَخْبِرْهُمْ أَنَّهُمْ يَكُونُونَ كَأَعْرَابٍ الْمُسْلِمِينَ يَجْرِي عَلَيْهِمْ حُكْمُ اللَّهِ الَّذِي يَجْرِي عَلَى الْمُؤْمِنِينَ، وَلَا يَكُونُ لَهُمْ فِي الْغَنِيمَةِ وَالْفَيْءِ شَيْءٌ إِلَّا أَنْ يُجَاهِدُوا مَعَ الْمُسْلِمِينَ»

“...*Invite them to (accept) Islam; if they respond to you, accept it from them and desist from fighting against them. Then invite them to migrate from their lands to the land of Muhajireen*

and inform them that, if they do so, they shall have all the privileges and obligations of the Muhajireen. If they refuse to migrate, tell them that they will have the status of Bedouin Muslims and will be subjected to the Commands of Allah like other Muslims, but they will not get any share from the spoils of war or Fai' except when they actually fight with the Muslims (against the disbelievers)" (reported by Muslim). The angle of deduction from this narration is the words of the Messenger ﷺ:

«لَمْ أُدْعُهُمْ إِلَى التَّحْوُلِ مِنْ دَارِهِمْ إِلَى دَارِ الْمُهَاجِرِينَ، وَأَخْرِيْهُمْ أَنَّهُمْ إِنْ فَعَلُوا ذَلِكَ فَلَهُمْ مَا لِلْمُهَاجِرِينَ وَعَلَيْهِمْ مَا عَلَى الْفَهَاجِرِينَ»

"*Then invite them to migrate from their lands to the land of Muhajireen and inform them that, if they do so, they shall have all the privileges and obligations of the Muhajireen*", which mentions in the text that it was a condition to migrate in order to get the same privileges and obligations as the Muslims, in other words, to be encompassed by the rules, and if they did not migrate then they would not have those privileges and obligations, and so the rules would not apply to them. Additionally, the Messenger ﷺ considered migration to the household of the *Muhajireen* (*Dar Al-Muhajireen*) as a condition to have a right over the war booty and spoils, and by analogy this applies to the rest of the properties, and so the one who does not migrate to *Dar Al-Muhajireen* is equally treated as the non-Muslims from the angle of the sanctity of their wealth, which means that the rules regarding property are inapplicable to them because they did not migrate to *Dar Al-Muhajireen*. And *Dar Al-Muhajireen* was *Dar Al-Islam*, and anything else was *Dar Al-Kufr* (domain of disbelief), which is why the Messenger ﷺ used to go out on expeditions to any land which was not part of *Dar Al-Muhajireen* as he assessed it to be *Dar Al-Harb*. However, if the inhabitants were Muslims he ﷺ would not

fight against them nor kill them, but rather would invite them to come to *Dar Al-Islam*, and if they were non-Muslims he would fight them as was indicated by this narration, and also indicated by what was reported from Anas who said:

«كَانَ رَسُولُ اللَّهِ ﷺ إِذَا عَزَّا قَوْمًا لَمْ يُغْرِي حَتَّىٰ يُصْبِحَ، فَإِنْ سَمِعَ أَذَانًا أَمْسَاكَ، وَإِنْ لَمْ يَسْمَعْ أَذَانًا أَعْلَمَ بَعْدَ مَا يُصْبِحُ»

“Whenever Allah's Prophet attacked some people, he would never attack them till it was dawn. If he heard the Adhan (i.e. call for prayer) he would delay the fight, and if he did not hear the Adhan, he would attack them immediately after dawn.”

(reported by Al-Bukhari). So the Messenger ﷺ used to consider that anything outside of *Dar Al-Muhajireen* was *Dar Al-Harb*, in other words, *Dar Al-Kufr*, even if its inhabitants were Muslims, and the rule regarding them is the rule for *Dar Al-Kufr* from the angle of the applicability of the rules, including the rules regarding property. There is no difference between the Muslims and non-Muslims other than that the Muslims are not fought and killed, and their wealth is not taken, whereas the non-Muslims can be fought and killed and their wealth can be taken. Other than this, the rules regarding them are the same, and this is the evidence for *Dar Al-Kufr* and *Dar Al-Islam*. Whoever resided in *Dar Al-Kufr* or *Dar Al-Harb* then their citizenship is to *Kufr* and so the rules regarding *Dar Al-Kufr* are applied upon them in entirety, irrespective of whether they were Muslim or not, except that the Muslim's blood and wealth are protected. Based upon them, the merchant from a warring nation (called a *Harbi*) cannot enter our lands whether they were Muslim or not, unless they were given assurances of security, because they are *Harbi*, and because the Messenger ﷺ said:

«وَذِمَّةُ الْمُسْلِمِينَ وَاحِدَةٌ يَسْعَى بِهَا أَذْنَاهُمْ»

“The protection granted by one Muslim is like one given by them all, and this right is extended to the most humble of them.” (agreed upon from ‘Ali), and he ﷺ said to Umm Hani:

«قَدْ أَجْرَنَا مِنْ أَجْرِهِنَّ يَا أُمَّ هَانِي»

“O Umm Hani, we granted protection asylum (protection) to whoever you granted asylum to” (agreed upon), and so the entrance of a *Harbi* into *Dar Al-Islam* is dependent upon him being giving assurances of security. And his wealth is also given security along with him, and it would require specific security assurances if he wanted to import it separate from him.

As for the one who has a covenant, then he is treated in accordance with his covenant, due to the words of Allah (swt):

﴿فَاتَّمُوا إِلَيْهِمْ عَهْدَهُمْ﴾

“So complete for them their treaty until their term [has ended].” (TMQ 9:4), and there is no difference between the Muslim and non-Muslim in this respect, because both of them are considered as *Harbi* since they carry the *Kufr* citizenship, and so they are treated as the *Harbi* who has a covenant.

The one who carries the Islamic citizenship, whether they were Muslim or *Dhimmī*, is not prevented from exporting and importing the goods they want, and in the same manner no custom duties are taken from them. As for not preventing them from importing or exporting any goods they want, this is due to the words of Allah (swt):

﴿وَأَحَلَّ اللَّهُ الْبَيْعَ﴾

“And Allah has permitted trade” (TMQ 2:275), which is general and so encompasses all trade, irrespective of whether it was in *Dar Al-Islam* or in *Dar Al-Kufr*, in other words, it encompasses both domestic and foreign trade. There is no text that restricts this generality or prevents the Muslim or *Dhimmi* from exporting or importing wealth into or from *Dar Al-Islam*, and it is also general encompassing both Muslim and *Dhimmi*, and there is no text which prohibits the *Dhimmi* or restricts the permission to trade to Muslims. As for not taking any custom duty from them, this is due to what was reported by Abu Ubaid in *Al-amwal* from ‘AbdAl-Rahman b. Ma’qal who said: I asked Ziyad b. Hudayr: "Whom did you use to take a tenth from? He said – we did not use to take tax Muslims nor the one who was under covenant. I said: Then whom you used to tax? He said: the merchants from Dar al Harb similar to what they used to do with us when we go to them." And the ‘Ashir was the one who took a tenth from the goods which were entering *Dar Al-Islam* from *Dar Al-Harb*. These are the evidences for *Dar Al-Islam* and *Dar Al-Harb* and the lack of entry for a *Harbi* into *Dar Al-Islam* unless he is given an assurance of security, whether he was a Muslim or disbeliever, and to treat one who has a covenant in accordance with that covenant, and the general permission for the Muslim and *Dhimmi* to trade, which are the evidences for the second issue of this article.

As for the third issue, its evidence is the principle: “*If one item of a permitted thing leads to harm, only that one item is prohibited, and the thing remains permitted*” which was deduced from the Messenger ﷺ forbidding the army from drinking from the wells of Thamud which were on the way to Tabuk. Therefore, every merchandise whose export would cause harm to the country, such as food, or whose export would strengthen the enemy against the Muslims, such as weapons and strategic materials, are prevented from being exported, irrespective of whether it was a

Muslim, *Dhimmi*, a person who had a covenant or a *Harbi* who was engaged in their export. Similarly, this rule applies on the import of goods. If the export of these goods did not cause harm then they are not prevented from being exported or imported by the Muslim and *Dhimmi*, and the rules related to the one who has a covenant and the *Harbi* apply to them.

Article 162

All individual subjects of the State have the right to establish scientific research laboratories connected to life issues, and the State must also establish such laboratories.

Scientific research is nothing more than knowledge which man can learn, and Allah (swt) permitted knowledge generally; He (swt) said:

﴿أَقْرِأْ بِاسْمِ رَبِّكَ الَّذِي خَلَقَ ﴾ [العلق] وَقَالَ: ﴿عَلَمَ الْإِنْسَنَ مَا لَمْ يَعْلَمْ﴾

“Recite in the name of your Lord who created - .” (TMQ 96:1) and: “Taught man that which he knew not.” (TMQ 96:5), and the Prophet ﷺ said:

«مَنْ يُرِدُ اللَّهُ بِهِ خَيْرًا يُفْعِلُهُ فِي الدِّينِ»

“When Allah wishes good for anyone, He bestows upon him the *Fiqh* of the (gives him knowledge of the Deen).” agreed upon from Mu’awiyah, and Al-Bukhari reported a narration *Ta’liq*

(without the chain) but mentioned it decisively (that is – he considered it to be a narration):

«وَإِنَّمَا الْعِلْمُ بِالْتَّعْلِيمِ»

“knowledge attainment is only by learning” and Al-Hafiz also said in *Al-Fateh* that the chain reaches back to the Prophet ﷺ.

These evidences indicate the permissibility of knowledge from the angle of it being knowledge, since His (swt) word: “**Read**” is general encompassing reading of everything, and His (swt) words: “**Taught man that which he knew not.**” (TMQ 96:5) includes all knowledge. The words of the Messenger ﷺ: “**Indeed knowledge...**” is the genus defined by *Alif* and *Lam* (the), so it is from the terms of generality. This all indicates that learning anything is permitted, and that any knowledge is permissible.

Accordingly, the generality of the evidences indicate the unrestricted permissibility of knowledge. Based upon this, any individual from the subjects of the State can seek knowledge, in other words, any knowledge, and to use the necessary means to arrive at scientific facts and truths, and so every individual has the right to initiate any research laboratories he wants, and to help whoever he pleases to establish laboratories.

These laboratories would be private property and would not be a part of public or State property. However, it is permitted for the State to possess such private property in its capacity as a semantic entity, just as any real person could own them. Its ownership of a laboratory would not make it the property of the State; rather it would remain private property, however it would be owned by the State and it would be part of the State's property while it remains a type of private property. When the State undertakes the establishment of laboratories, it is only doing it from the angle of managing the affairs of the subjects, and establishing

the obligation that Allah (swt) put upon it which is to produce knowledge, part of which would include establishing laboratories.

Article 163

Individuals are prevented from possessing laboratories producing materials that could harm the *Ummah* or the State, or materials that the *Shari'ah* forbade.

Its evidence is the *Shari'ah* principle:

(الشيء المباح إذا كان فرد من أفراده يؤدي إلى ضرر يمنع ذلك الفرد ويفقى
الشيء مباحاً)

“If one item of a permitted thing leads to a harm, only that one is prohibited, and the thing remains permitted”, and laboratories whose private ownership leads to harm are prevented from being privately owned, such as nuclear laboratories and anything else whose private ownership would lead to harm.

Article 164

The State provides free health care for all, but it does not prevent the use of private medical care or the sale of medicine.

Healthcare is part of the interests and utilities which the people cannot do without and so it is considered to be from the essentials. The Messenger ﷺ ordered people to take treatment:

«جَاءَ أَعْرَابِيٌّ فَقَالَ: يَا رَسُولَ اللَّهِ، أَنْتَ دَارِي؟ قَالَ: نَعَمْ، فَإِنَّ اللَّهَ لَمْ يُنْزِلْ دَاءً إِلَّا أَنْزَلَ لَهُ شِفَاءً، عِلْمَهُ مَنْ عَلِمَهُ وَجَهْلَهُ مَنْ جَهَلَهُ»

“A Bedouin came and said: O Messenger of Allah, should I make use of medical treatment? He replied: Make use of medical treatment, for Allah has not made a disease without appointing a remedy for it, the one who knows it knows it and the one who is ignorant of it is ignorant of it” (reported by Ahmad from Usama Bin Shareek). And in another version from Al-Tabarani in *Al-Mu’jam Al-Kabir*, reported from Usamah b. Sharik:

«كُنَّا مَعَ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَأَتَاهُ نَاسٌ مِّنَ الْأَعْرَابِ فَسَأَلُوهُ، فَقَالُوا: يَا رَسُولَ اللَّهِ، أَنْتَ دَارِي؟ قَالَ: نَعَمْ، إِنَّ اللَّهَ عَزَّ وَجَلَّ لَمْ يُنْزِلْ دَاءً إِلَّا أَنْزَلَ لَهُ شِفَاءً».

“We were with the Messenger of Allah, when some desert Arabs came. They asked: Messenger of Allah, should we make use of medical treatment? He replied: Make use of medical treatment, for Allah has not made a disease without appointing a remedy for it.” And in Al-Tirmidhi also from Usamah b. Sahrik with the wording:

«قَالُوا لِلنَّاسِ يَا رَسُولَ اللَّهِ، أَلَا نَتَدَارِي؟ قَالَ: نَعَمْ، يَا عِبَادَ اللَّهِ تَدَارُوْا، فَإِنَّ اللَّهَ لَمْ يَضْعِفْ دَاءً إِلَّا وَضَعَ لَهُ شِفَاءً، أَوْ قَالَ دَوَاءً إِلَّا دَاءً وَاحِدًا، قَالُوا: يَا رَسُولَ اللَّهِ، وَمَا هُوَ؟ قَالَ: الْهَرْمُ»

*“Some Bedouins asked: ‘O Messenger of Allah (s.a.w) shall we treat (our ill)?’ He said: ‘Yes, O worshipers of Allah! Use remedies. For indeed Allah did not make a disease but He made a cure for it’ - or - ‘a remedy. Except for one disease.’ They said: ‘O Messenger of Allah (s.a.w)! What is it?’ He said: ‘Old age.’”, and Al-Tirmidhi said this narration is *Hasan Sahih*. Al-*

Haram (Elderliness) is the end of life, which is usually followed by death.

This indicates the permissibility of seeking treatment. Through treatment, benefit is gained and harm is prevented, so it is considered to be an interest, and on top of that the clinics and hospitals are a utility which the Muslims use for the sake of seeking treatment and cure, and so healthcare is, therefore, part of the benefits and utilities. The State is obliged to provide the benefits and utilities, because it is part of what the State must practically manage due to the words of the Messenger ﷺ:

«الإِمَامُ رَاعٌ وَهُوَ وَمَسْؤُولٌ عَنْ رَعْيَتِهِ»

“The Imam is a guardian and he is responsible for his subjects” (reported by Al-Bukhari from ‘Abd Allah Bin Umar). This is from the responsibilities of guardianship and for that reason it is obligatory upon the State to ensure it is provided to the people. From the evidences for that:

Muslim reported from Jabir who said:

«بَعَثَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِلَى أَبِي بْنِ كَعْبٍ طَبِيبًا، فَقَطَّعَ مِنْهُ عِرْقًا ثُمَّ كَوَاهُ عَلَيْهِ»

“The Messenger of Allah sent a physician to Ubayy b. Ka'b. He cut the vein and then cauterised it”.

Al-Hakim narrated in *Al-Mustadrak* from Zayd b. Aslam from his father who said: “I fell severely ill at the time of Omar Bin Al-Khattab, and so Omar called a physician for me, and so he warmed me up to the point I would suck on date pits due to the intense heat.”

Based upon this, it is obligatory upon the State to provide free medication and medical facilities, since it is part of the expenditures obligated upon the *Bayt Al-Mal* from the angle of

being an interest and utility without recompense, and accordingly the State must provide all the health services without cost. This is the evidence that healthcare is part of what the State is obliged to provide to the people for free.

As for the permissibility of hiring a doctor, and paying him a fee, this is because seeking treatment is permitted (*Mubah*); as mentioned previously the Prophet ﷺ said:

«يَا عَبَادَ اللَّهِ تَدَأْوُوا»

“O Slaves of Allah seek treatment”, and since treatment is a service that the one paying for can achieve, therefore, the definition of hiring is applicable to it, and there has been no prohibition narrated regarding it. Above that, it is reported from Anas:

«اَخْتَجَمَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ حَجَّمُهُ أَبُو طَيْبَةَ، وَأَعْطَاهُ صَاعَيْنِ مِنْ طَعَامٍ وَكُلُّمٍ مَوَالِيَةً فَحَقَّقُوا عَنْهُ»

“Allah's Prophet was cupped by `Abd Taiba, to whom he gave two Sa of food and interceded for him with his masters who consequently reduced what they used to charge him daily.” (reported by Al-Bukhari from Anas), and what is intended by master was his owners since he was owned by a group, as indicated by the report in Muslim. It is reported by Ibn ‘Abbas:

«اَخْتَجَمَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَأُعْطِيَ الْحِجَّامَ أُجْرَهُ، وَلَوْ كَانَ سُخْنَاتِ مَمْ يُعْطِيهِ»

“The Prophet was cupped and he paid the wages to the one who had cupped him If it had been haraam, he would not have paid it.” (reported by Ahmad with this wording, and by Muslim and Al-Bukhari with a different wording). In those days

Hijamah was part of the treatments that people would care for their health with, which indicates that to pay a fee for it is permitted. And similar to the fee for a doctor, is the selling of medicines since it is something permitted encompassed by the words of Allah (swt):

﴿وَأَحَلَّ اللَّهُ الْبَيْعُ﴾

“**And Allah has permitted trade**” (TMQ 2:275), and there is no text narrated to forbid it.

Article 165

Development and investment by foreign funds within the State are forbidden. It is also prohibited to grant franchises to foreigners.

The two words: “*investment*” and: “*development*” are Western terms. The term investment means that the money itself produces profit, which is by yielding interest. As for the term development, it means to use the money in industry, agriculture or trade, in order to produce profit.

Based upon this understanding, all investment is not allowed, since it is interest and interest is forbidden (*Haram*). Although the text regarding foreign investment is explained by the rule that it is prohibited to engage in interest with a *Harbi*, in the same way as a *Dhimmi* and a Muslim without any difference between them due to the generality of His (swt) words:

﴿وَحَرَمَ الْرِبَا﴾

“And has forbidden interest (usury).” (TMQ 2:275), and since there is no authentic text which specifies it then it remains general. It cannot be said that the narration:

«لَا يَنْبَغِي لِلنَّاسِ أَنْ يُؤْتُوا مِمْوَالَهُمْ وَأَنْ يُنْهَى عَنِ الدِّينِ فِي دَارِ الْحُرْبِ»

“there is no interest (usury) between the Muslims and the enemy in Dar Al-Harb” specifies it since the narration is weak as it is Mursal from Makhul. Shafi'i said in *Al-Umm* that it is not confirmed and it is not an evidence, and Ibn Muflah said the report is unknown - so it is not suitable as an evidence to prove the permission of interest, and nor does it specify/restrict the verse, and so the verse remains general. Therefore, foreign investment is forbidden in the same way as investment from the subjects (Muslims and *Dhimmis*) because it is interest and thus it is forbidden.

As for the prohibition of development through foreign funds this is because it leads to *Haram* in agreement with the rule: “*The means to something forbidden is also forbidden*”, and the strongest possibility is enough to make something prohibited, so what about when foreign development leads to a confirmed *Haram*? It is confirmed by the senses and by information whose authenticity is trusted that the use of foreign funds for development in the country is the method to extend the influence of the disbelievers over them, and extending their influence in the land is *Haram*.

As for concessions, it is also a Western term, and has two meanings. Firstly, that a particular foreign State is given special rights with the consideration that they are an obligation for that state upon the Islamic State, such as the concessions that the Islamic State gave in the nineteenth century while it was weak, and such as the concessions that Britain and France used to have in Egypt, such as the foreign subjects being judged according to the

laws of their country rather than the laws of Islam, and the example of the State having no authority over the foreigners. These concessions, with this meaning, are forbidden from two angles; firstly: they take away from the sovereignty of the Islamic State, and give the disbelieving States authority over the Islamic lands, which is something decisively forbidden (*Haram Qat'an*); secondly: they prevent the rule of Islam being applied upon the non-Muslims in the Islamic State and make the rule of disbelief (*Kufr*) applicable in its stead, which is also decisively forbidden. Due to this, concessions according to the meaning mentioned are prohibited.

As for the second meaning of concessions, it means to give a permit to carry out a permitted action, and those without the permit would be forbidden. This is all forbidden, irrespective of whether it was being applied to the foreigner or not, since any permitted issue is permitted for everyone, and so to restrict it to a particular individual while prohibiting others, is forbidding something which is permitted for the people. It is correct that the State can organise the permitted issues according to the styles which would enable it to benefit from them in the best manner; however it is not correct that this organisation would prohibit anyone from something that was permitted.

Accordingly, concessions according to this meaning are also prohibited for the foreigner and the one who was not a foreigner, and the text mentions foreigner since giving the concession to him is a cause of harm, since it gives him control over the country, as is the case with the oil concessions.

Article 166

The State issues its own independent currency, and it is not permitted for it to be linked to any foreign currency.

The evidence for the first half of this article is the evidence that gave the *Imam* the right to manage the affairs with the words of the Prophet ﷺ:

«الإمام راعٍ»

“The Imam is a guardian” (reported by Al-Bukhari from ‘Abd Allah Bin Umar), and organising the permitted issues is from the management of the affairs. To create a specific currency for the State is from the permitted issues, so it is permitted for the State to create a specific currency, and in the same way it is permitted for the State not to do so. The Messenger ﷺ did not create a specific currency based upon specific consistent characteristics, and in his ﷺ time the State did not have its own currency, and the situation remained the same throughout his time and the time of the righteous guided *Khulafaa’* after him, and during the beginning of the Ummayad period up until the time of ‘Abd alMalik b. Marwan who decided to change everything from the gold and silver that was being used, whether minted or not, to the currency with an Islamic minting and of equal weight without any disparity. Consequently, he minted Dirhams from silver and Dinars from gold, and from that time the Islamic *Dinars* and *Dirhams* were minted whereas they were not known before then. So to issue a currency is permitted and is not obligatory upon the State, unless safeguarding the economy of the land from ruin and protecting it from its enemies required the issuing of a currency, at which point its issuance would be obligatory, in accordance with the *Shari’ah* principle: “*That, without which the obligation cannot be accomplished, is itself an obligation*”.

As for the second part of the article, the evidence for its forbiddance is that it would make the State follow whichever

disbelieving state it links its currency too, as was the scenario when Iraq used to be linked to Sterling, and over and above that it would be at the mercy of that disbelieving state from the financial angle. Both of these issues are forbidden, and the *Shari'ah* principle states that: “*The means to something forbidden is also forbidden*”, and so to link the currency of the Islamic State to a foreign State is forbidden.

Article 167

The currency of the State is to be restricted to gold and silver, whether minted or not. No other form of currency for the State is permitted. The State can issue something as a substitute for gold or silver provided that the *Bayt Al-Mal* has the equivalent amount of gold and silver to cover the issued coinage. Thus, the State may issue coinage in its name from brass, bronze or paper notes and so on as long as it is covered completely by gold and silver.

When Islam decided the rules of selling and hiring, it did not specify what would be exchanged for the goods or service and benefit such that upon that basis that thing would become obligatory. Rather it left man to exchange using anything as long as there was mutual consent for that exchange, and so it is permitted to marry a woman upon teaching her sewing, and to buy a car in exchange for working in the factory for a month, and it is permitted to work for an individual for a specific amount of sugar. The *Shari'ah* left the issue of exchange open for people so that they could base it upon whatever they wanted, which is proven by the generality of the evidences for trade and hiring such as:

﴿وَأَحَلَ اللَّهُ الْبَيْعَ﴾

“And Allah has permitted trade” (TMQ 2:275) – for anything and by anything, and the narration:

«أَعْطُوا الْأَجِرَ أَجْرَهُ قَبْلَ أَنْ يَحْفَظَ عَرْفَهُ»

“Give the worker his wages before his sweat dries.” (reported by Ibn Maja); in other words, that the worker should receive his salary when he finishes his work, whatever the nature of that wage. Additionally, these things that are used for exchange are not actions such that they would in origin be restricted (to the evidence) and so their permission would require an evidence, but rather they are things. The origin regarding things is that they are permitted as long as there is no evidence to prohibit them, and there is no evidence reported which prohibits using anything as an exchange, and so accordingly it is permitted to carry out *Shari’ah* transactions with them whether buying and selling, giving as a gift or exchanging with the exception of anything where there is a text prohibiting its exchange. Based upon this, exchanging goods for money, and money for goods is permitted without any restrictions, except for exchanging money with money because it has specific rules and so it is restricted by those rules. In the same manner, exchanging effort for money, and money for effort, is permitted without restriction unless the goods or service have been mentioned in a text as being forbidden. Accordingly, to exchange goods for a specific form of money, and in the same manner to exchange a service or effort for a specific unit of money, is also permitted without any restriction, whatever the unit of that money may be. So irrespective of whether that unit doesn’t have anything backing it, such as fiat currency, or if it was backed by a specific amount of gold , such as secured paper currency, or if the unit was backed by gold and silver to its value such as representative paper currency,

all of them are considered to be allowed to trade with. Therefore, it is correct to exchange goods or services for any unit of money and it is permitted for the Muslim to sell for any currency and to buy with any currency and to hire with any currency and to be employed for any currency.

However, if the State wanted the lands that it ruled to adopt a specific unit of money, such that it implements the rules of the *Shari'ah* related to finance from the angle of it being wealth such as *Zakah*, exchange, interest and anything else, and the rules related to the individual who owned the wealth such as blood money, the minimum stolen amount that would be considered theft, and so on, then it does not have an open hand to use any specific monetary unit, but rather it is restricted to use only a specific type of money and no other. The *Shari'ah* specified the monetary unit, from a specific genus which the text mentioned, and this is gold and silver. So if the State wanted to issue a currency, it is restricted to the money being gold and silver and nothing else. The *Shari'ah* did not leave the State to issue any money it pleased, from any type it wanted, but rather it specified the monetary units which the State could make as a currency for itself if it wanted to issue a currency with specific monetary units; which are gold and silver alone. The evidence for this is that Islam connected to gold and silver with fixed rules, and without any change. So when blood money was specified, it was specified from a specific amount of gold, and when the cutting of the hand of the thief was obligated, the minimum amount that the punishment would be applied for was specified from gold; the Messenger ﷺ said in his message to the people of Yemen:

«وَأَنَّ فِي النَّفْسِ الْمُؤْمِنَةِ مِائَةً مِنَ الْإِبْلِ، وَعَلَى أَهْلِ الْوَرَقِ أَلْفُ دِينَارٍ»

“and for the believing soul (if killed) it is one hundred camels, and for the people of silver one thousand Dinars”

(mentioned by Ibn Qudamah in *Al-Mughni* from what was reported from ‘Amru b. Hazim from the letter of the Messenger of Allah to the people of Yemen). And in the report in *Al-Nisa’i* regarding the letter of the Messenger of Allah ﷺ to the people of Yemen: “**and upon the people of gold it is one thousand Dinars**” in place of: “**people of silver**”. And he ﷺ said:

«لَا تُقْطِعُ يَدُ السَّارِقِ إِلَّا فِي رُبْعِ دِينَارٍ فَصَاعِدًا»

“**Do not cut (the hand) except for a quarter of a Dinar and more**” (reported by Muslim from Aisha(ra)).

This defines specific rules with *Dinars* and *Dirhams*, and the weight of the *Dinar* measured by gold, and the *Dirham* by silver, which made them monetary units analogous to the value of objects and effort. This monetary unit is the currency and its basis. The fact that the *Shari’ah* textually connected gold and silver to the *Shari’ah* rules when these rules were related to currency is evidence that the currency can only be from gold and silver alone.

Additionally, when Allah (swt) obligated *Zakah*, He (swt) obligated it upon gold and silver alone, and specified the *Nisab* from gold and silver, and so the consideration that the *Zakah* upon money is by gold and silver specifies that the currency is gold and silver, and if there was a currency other than them then *Zakah* for money would have been obligatory upon it. Because there is no text for *Zakah* upon money except upon gold and silver, this indicates that there is no consideration for any other type of money. Also, the rules of currency exchange which were revealed regarding monetary transactions alone addressed gold and silver alone and all of the financial transactions mentioned in Islam are dealt with in gold and silver. And currency exchange is to sell money for money, either to sell one type of money with itself, or to sell it for another type of money, and by another expression currency exchange is to

sell a currency for a currency. The *Shari'ah* specified currency exchange – which is a purely monetary transaction – with gold and silver alone, which is a clear evidence that the currency must be from gold and silver and nothing else. He ﷺ said:

«وَبِعُوا الْذَّهَبَ بِالْفِضَّةِ وَالْفِضَّةَ بِالْذَّهَبِ كَيْفَ شِئْتُمْ»

“*Sell gold for silver as you please*” (reported by Al-Bukhari from Abu Bakra). And Muslim reported similar to it through Ubada Bin Al-Samit. The Messenger ﷺ also said:

«الْذَّهَبُ بِالْوَرِقِ رِبَا إِلَّا هَاءَ وَهَاءَ»

“*Gold for silver is interest (usury) unless it is exchanged hand to hand*” (agreed upon from Umar).

Above that, the Messenger ﷺ specified gold and silver as money, and made them alone the measures of monetary value which the values of goods and efforts were measured against, and upon which basis transactions were carried out. The measures for this currency were the *Awqiya*, the *Dirham*, the *Daniq*, the *Qirat*, the *Mithqal*, and the *Dinar*. These were all well known and famous at the time of the Prophet ﷺ, and the people would transact with them. And it is confirmed that he ﷺ consented to them. All of the trade and marriages took place with gold and silver, as has been confirmed by several authentic narrations, and so the fact that the Messenger ﷺ made gold and silver the currency, and the fact that the *Shari'ah* linked some of the *Shari'ah* rules with them alone, and that *Zakah* upon money is limited to them, and currency exchange and financial transactions were limited to them, are all clear evidence that the money of Islam is only gold and silver and nothing else.

However, it is necessary to be clear that the fact that the *Shari'ah* specified the currency that the State can issue as being

monetary units from gold and silver, does not mean that the State restricts the exchanges between the people in the lands which are ruled by this currency, rather it means that the *Shari'ah* rules which the *Shari'ah* specified the use of these specific monetary units cannot be carried out other than in accordance with this money. As for general exchanges, they remain permitted as brought by the *Shari'ah*. It is not permissible for the State to restrict them to a particular unit; in other words, it is not permissible to restrict them to its or any other currency, since this restriction would be the forbiddance of something permitted, which is not permitted for the State to do. However, if the State thought that permitting any other currency in the lands it had authority over would lead to damaging its currency, its finance or its economy, in other words, would lead to harm, then it would be permitted to prevent it in accordance with the principle: "*The means to something forbidden is also forbidden*". In the same manner, if it thought that a particular currency would lead to that harm, then it could prohibit that currency in accordance with the rule: "*If one type of a permitted thing leads to harm then only that one is prohibited, and the thing remains permitted*". This is also applied to exporting the currency of the State, and importing and exporting foreign currency, in the same way that it is applied upon the transactions within the State.

Article 168

It is permissible to have exchange between the State currency and the currency of other states like the exchange between the State's own coinages. It is permissible for the exchange rate between two currencies to differ provided the currencies are different from each other. However, such transactions must be undertaken in a hand-to-hand manner and constitute a direct transaction with no delay involved. The exchange rate can

fluctuate without any restriction as long as it is between two different currencies. All citizens can buy whatever currency they require from within or outside the State, and they can purchase the required currency without obtaining prior permission or the like.

Its evidence are the words of the Prophet ﷺ:

«وَبِعُوا الْذَّهَبَ بِالْفِضَّةِ وَالْفِضَّةَ بِالْذَّهَبِ كَيْفَ شِئْتُمْ»

“and sell gold for silver and silver for gold as you please” (reported by Al-Bukhari from Abu Bakra), and it is reported from Malik b. Aws Al-Hadathan that he said: “I came saying who was prepared to exchange Dirhams (for my gold), whereupon Talha b. Ubaidullah (as he was sitting with 'Umar b. Khattib) said: Show us your gold and then come to us (at a later time). When our servant would come we would give you your silver. Thereupon 'Umar b. Al-Khattib (ra) said: Not at all. By Allah, either give him his silver, or return his gold to him, for Allah's Messenger ﷺ said:

«الْوِرْقُ بِالْذَّهَبِ رِبَّا إِلَّا هَاءَ وَهَاءٌ»

Exchange of silver for gold is interest (usury) except when (it is exchanged) on the spot (hand to hand).” (reported by Muslim).

It is reported that Al-Bara' b. 'Azib and Zayd Bin Arqam used to be partners, and so they bought silver for money and a deferred payment, and when the Messenger of Allah ﷺ heard about this he ﷺ ordered them with the words:

«أَنَّ مَا كَانَ يُنَقْدِ فَاجِرُوهُ، وَمَا كَانَ يُنَسِّيَ فَرُدُودُهُ»

“Whatever is paid by money is permitted, and whatever is a deferred payment must be returned (rejected).” reported by Ahmad from Abu Al-Minal, and Al-Bukhari reported from Sulaiman Bin Abi Muslim who said: “**I asked Abu Al-Minal about money exchange from hand to hand. He said: “I and a partner of mine bought something partly in cash and partly on credit.” Al-Bara’ b. ‘Azib passed by us and we asked about it. He replied: “I and my partner Zayd Bin Al-Arqam did the same and then went to the Prophet and asked him about it. He said:**

«أَنَّ مَا كَانَ بِنْقُدٍ فَأَجِيزُوهُ، وَمَا كَانَ نَسِيئَةً فَرُدُوْهُ»

“Whatever is paid by money is permitted, and whatever is a deferred payment must be returned (rejected). ”; in other words, they were currency traders. These narrations are evidence for the permissibility of currency exchange, and this can take place in domestic transactions as well as foreign transactions, so just as the gold of a currency can be exchanged for its silver and vice versa, in the same way foreign money can be exchanged for local money, irrespective of whether that was done domestically or outside the country, and when two different currencies are exchanged there is a difference between them called the exchange rate. The exchange rate is the proportion between the weight of pure gold in the currency of a state and the weight of pure gold in the currency of another state. For this reason, the exchange rate will change according to the change in this proportion and according to the change of price of gold in the countries.

The rules of exchange between silver and gold apply to contemporary paper money because the *Illah* (money and value) are present in it due to law of the State binding monetary transactions with it. That is because the narrations regarding exchange are reported to do with minted gold and silver as names of a genus, which has no understanding derived from it nor is any

analogy made to it, and in the same manner the reports came to do with *Dinar* and *Dirham* coinage, and from this the *Illah* of money can be derived, in other words, its use for prices and wages, and so analogy can be made from that. So in the narration of Malik b. Aws mentioned previously he used to exchange *Dirhams*, and *Dirhams* is a word which is understood as money. And so accordingly whatever is applied to the exchange between gold and silver in terms of what is permitted and prohibited is applied to exchange between fiat currency according to the contemporary laws of states, in other words, the exchange between one genus must be exchanged on the spot and in equal amounts, and exchange between two different types must be done on the spot, but the price between the two can be as you please.

The *Shari'ah* rule regarding exchange rate is that it is permitted, and is not restricted by anything, since currency exchange is permitted, and so accordingly the price of exchange (exchange rate) is permitted. Hence, anyone can buy a currency which he wants according to the price which he desires, and all of that falls under the permissibility of exchange.

This is the proof of this article for the permissibility of currency exchange, and the permissibility for its price to fluctuate.

Article 169

It is completely prohibited to open banks, and the only one permitted will be the State bank, and there are no transactions upon interest. This will be dealt with by a particular department of the *Bayt Al-Mal*. Financial loans will be undertaken in accordance with the rules of the *Shari'ah* and the financial and currency transactions will be facilitated.

The work of the bank falls under three types: interest based transactions such as bonds and credits, transferral transactions such as cheques and deposits.

The transferral transactions and deposits are both permitted according to the *Shari'ah* and the evidence for that are the evidences for transfers and the evidences for trusts. So it is permitted for a Muslim to open a bank in order to provide transferral transactions and services for deposits and whatever else that are similar from whatever are permitted by the *Shari'ah* such as currency transactions. In such a case, opening a bank would not be considered forbidden, since only the bank which operates with interest is forbidden. However, these transactions do not make large profits or its profits could only help in establishing something similar to the shops for currency traders. It would not be possible for anyone to open a bank with such money due to the lack of capability to make enough profits for it, since the profits from transfers and deposits, and the profits from currency exchange transactions are very small compared to the profits from interest, and the large profits are the profits which are from investments in interest based transactions and so these are the profitable investments. Accordingly the profits from transfers, deposits and currency exchange transactions would not be sufficient to open banks in the meaning they are known as in the world today, but rather it would only be sufficient to open shops with limited services, such as the shops of currency traders, which is not applicable to what are known as banks today. The opening of banks could not occur except with interest based transactions, and the bank is only opened for the sake of interest based transactions, and interest is forbidden (*Haram*) according to decisive Qur'anic text:

﴿وَحَرَمَ الْرِّبُو﴾

“And has forbidden interest (usury)”, and for that reason opening a bank according to its current understanding is forbidden.

However, the giving of loans is permitted without restriction, due to the words of the Messenger ﷺ:

«مَا مِنْ مُسْلِمٍ يُفْرِضُ مُسْلِمًا فَوْضًا مَرَبِّينَ إِلَّا كَانَ كَحْدَقَتْهَا مَرَّةً»

“There is no Muslim who gives a loan twice to another Muslim, but it will be like giving charity once.” (reported by Ibn Maja from ‘Abd Allah b. Mas’ud), and it is reported from Anas who said:

«رَأَيْتُ لَيْلَةً أُسْرِيَ بِي عَلَى بَابِ الْجَنَّةِ مَكْتُوبًا: الصَّدَقَةُ بِعَشْرِ أَمْثَالِهِ، وَالْقَرْضُ بِسَمَانِيَّةِ عَشَرَ، فَقُلْتُ: يَا جِبْرِيلُ، مَا بِالْقَرْضِ أَفْضَلُ مِنِ الصَّدَقَةِ؟ قَالَ: لَأَنَّ السَّائِلَ يَسْأَلُ وَعِنْدَهُ، وَالْمُسْتَفْرِضُ لَا يَسْتَغْرِضُ إِلَّا مِنْ حَاجَةٍ»

“On the night on which I was taken on the Night of ascent (Isra), I saw written at the gate of Paradise: 'Charity brings a tenfold reward and a loan brings an eighteen fold reward.' I said: 'O Jibril! Why is a loan better than charity?' He said: 'Because the beggar asks when he has something, but the one who asks for loan does so only because he is in need” (reported by Ibn Maja).

Likewise, deposits are permitted due to the words of Allah (swt):

﴿إِنَّ اللَّهَ يَأْمُرُكُمْ أَن تُؤْدُوا الْأَمْنَاتِ إِلَى أَهْلِهَا﴾ [النساء ٥٨] وَقَالَ: ﴿فَإِنْ أَمِنَ بَعْضُكُمْ بَعْضًا فَلَيُؤَدِّدَ اللَّذِي أَوْتُمْ أَمْنَاتَهُ﴾

“Indeed, Allah commands you to render trusts to whom they are due.” (TMQ 4:58), and He (swt) said: “And if one of you

entrusts another, then let him who is entrusted discharge his trust [faithfully].” (TMQ 2:283), and due to the words of the Messenger ﷺ:

«أَذْلِلُ الْأَمَانَةَ إِلَى مَنْ أُتَّمَّنَكَ، وَلَا تَخْنُقْ مَنْ حَانَكَ»

“Give the trust to the one who entrusted you, and don't betray who betrays you” (reported by Al-Tirmidhi from Abu Hurayrah, and he said: that the narration is *Hasan Gharib*). And it is reported about him ﷺ:

«أَنَّهُ كَانَتْ عِنْدَهُ وَدَائِعٌ، فَلَمَّا أَرَادَ الْمِحْرَةَ أَوْدَعَهَا عِنْدَ أُمِّ الْيَمِّينَ، وَأَمْرَ عَلَيْهَا أَنْ يَرْدَدَهَا
عَلَى أَهْلِهَا»

“that he had some deposits with him, and when he wanted to make migration (Hijrah), he gave them to Um Ayman and ordered Ali to return them to their owners.” (as reported by Ibn Qudamah in *Al-Mughni*).

Transfer of loans is permitted due to the words of the Messenger ﷺ:

«مَطْلُوْلُ الْغَيْنِيِّ ظُلْمٌ، وَإِذَا أُتْبِعَ أَحَدُكُمْ عَلَى مَلِيِّهِ فَلَيْسَ بِعَنْ

“The delay (of payment) by a rich person is injustice, but when one of you is referred for payment to a wealthy man, let him be referred.” (reported by Muslim), and in a version by Ahmad in *Al-Musnad*:

«وَمَنْ أُحِيلَ عَلَى مَلِيِّهِ فَلَيْسَ بِخَالِدٍ»

“whoever is referred for payment to a wealthy man, then accept it.”.

These three transactions which the bank undertakes are permitted by the *Shari'ah* and the only thing forbidden is taking interest upon loans. The bank cannot be opened and operate except with interest, so, therefore, it is imperative to provide these services to people without interest, since they have become part of peoples' affairs and accordingly it is necessary for the State to open a bank as a branch of the *Bayt Al-Mal*. Then it would undertake these three transactions according to the opinion and *Ijtihad* of the *Imam*, because they are part of the permitted issues whose management is run according to his opinion and *Ijtihad*, and so this is the evidence that the State must open a bank which would undertake the settling of peoples' affairs.

The Education Policy

Article 170

It is imperative that Islamic ‘Aqeedah is the basis for the education curriculum. The syllabi and the ways of teaching are all drafted in a manner that does not deviate from this basis.

It is said linguistically: a man learns knowledge ('Ilm) – he arrives at the true knowledge, and he learns something – he knows it. In the *Al-Muhit* dictionary it mentions: “he learnt it is like he heard it as knowledge...and knowledge is in the person, and the man is a scholar, and knowledgeable”. This linguistic meaning is the basis of the meaning of the word knowledge and its derivations, and so the linguistic meaning of the word and its derivations are taken as long as there is no indication present which transfers it to the terminological meaning. What is meant by: “education curriculum” is the linguistic meaning; in other words, every knowledge. The education curriculum is an expression meaning the basis upon which the information which is desired to be learnt is built upon; from one angle this is the subjects which are encompassed by this information and from another angle how this information is going to be given. It therefore encompasses two issues: firstly, the topics for study, and secondly, the ways of teaching. Since the Islamic ‘Aqeedah is the basis of the Muslim’s life, and the basis for the Islamic State, and for the relationships between the Muslims, in other words, the basis for the society, then it is imperative that every piece of information that the Muslim receives is based upon the Islamic ‘Aqeedah. This is irrespective of whether the information was connected to his life, or to his

relationship with others, or to the political situation in the State, or connected to any aspect of this life, or what came before it or what comes after it. The Messenger ﷺ used to first call people to Islam, in other words, for them to embrace the Islamic ‘Aqeedah. Once they embraced Islam, he ﷺ started teaching them the rules of Islam, and so the ‘Aqeedah was the basis of the teachings of the Messenger ﷺ to the Muslims. When the sun was eclipsed at the time that his ﷺ son Ibrahim died, the people said that the sun had eclipsed due to the death of Ibrahim, and so he ﷺ said to them:

«إِنَّ الشَّمْسَ وَالْقَمَرَ آيَاتٍ مِّنْ آيَاتِ اللَّهِ، لَا يَنْكُسُفَانِ لِمَوْتٍ أَحَدٍ وَلَا لِحَيَاةٍ»

“The Sun and the Moon are two signs from the signs of Allah, they do not eclipse due to anyone’s death or life.” (agreed upon). And so the Prophet ﷺ made the ‘Aqeedah the basis for the information he ﷺ gave regarding the solar and lunar eclipses. It is reported by Al-Bukhari from Abu Sa‘id Al-Khudri who said:

«خَرَجْنَا مَعَ رَسُولِ اللَّهِ ﷺ فِي غَزْوَةِ بَنِي الْمُصْطَلِقِ، فَأَعْصَبْنَا سَيِّئًا مِنْ سَيِّئِيِّ
الْعَرَبِ، فَاشْتَهَيْنَا النِّسَاءَ، فَاشْتَدَّتْ عَلَيْنَا الْغُزْبَةُ وَأَحْبَبْنَا الْعَرْلَ، فَسَأَلْنَا رَسُولَ اللَّهِ ﷺ
فَقَالَ: مَا عَلَيْكُمْ أَنْ لَا تَفْعُلُوا، مَا مِنْ نَسَمَةٍ كَائِنَةٌ إِلَى يَوْمِ الْقِيَامَةِ إِلَّا وَهِيَ كَائِنَةٌ»

“We went with Allah’s Messenger, in the expedition of Bani Al-Mustaliq and we captured some of the ‘Arabs as captives, and the long separation from our wives was pressing us hard and we wanted to practice coitus interruptus. We asked Allah’s Messenger (whether it was permissible). He said, “There is nothing upon you if you do it. No soul, (that which Allah has) destined to exist, up to the Day of Resurrection, but will definitely come, into existence.””, and in another narration they asked the Prophet ﷺ about coitus interruptus and he ﷺ said:

«مَا عَلَيْكُمْ أَنْ لَا تَفْعَلُوا، فِإِنَّ اللَّهَ قَدْ كَتَبَ مِنْ هُوَ خَالِقٌ إِلَى يَوْمِ الْقِيَامَةِ»

“There is nothing upon you if you do it, since Allah has Written whoever He Created until the day of Judgement.” and Muslim reported similar to this. So the Messenger ﷺ answered their question regarding withdrawal from the angle of whether it prevents pregnancy, and made belief in the Knowledge of Allah (swt) the basis of his ﷺ answer; in other words, he ﷺ made the Islamic ‘Aqeedah the basis of his ﷺ answer. And there are several narrations which indicate that making the Islamic ‘Aqeedah the basis for the education curriculum is an obligatory issue upon the State, and that it is not permitted for it to stray from that at all. However, making the ‘Aqeedah the basis for the education curriculum does not mean that every piece of information emanated from it, because that was not requested by the *Shari’ah*. This also contradicts the reality, since not every piece of information emanates from the Islamic ‘Aqeedah, since the ‘Aqeedah is specific to beliefs and laws, and has no relationship to anything else. Rather, the meaning of making it the basis for the education curriculum only means that all the information connected to beliefs and laws must emanate from the Islamic ‘Aqeedah, since that is what the ‘Aqeedah came with. As for with respect to any information other than beliefs and laws, the meaning of making the Islamic ‘Aqeedah the basis for it is that these information and laws should be built upon the Islamic ‘Aqeedah; in other words, the Islamic ‘Aqeedah is used as the criterion, so anything that contradicts it is rejected and not believed in, and whatever does not contradict it is permitted to be accepted. So the ‘Aqeedah is the criterion for acceptance and beliefs.

As for the angle of information and learning, there is nothing that prohibits it from being learnt, since the evidences

which encourage seeking knowledge are general; the Prophet ﷺ said:

« طَلَبُ الْعِلْمِ فَرِيضَةٌ »

“*Seeking knowledge is a duty*”, Al-Zarkashi said in *Al-Tadhkirah*: “and Al-Hafiz Jamal Al-Dinn Al-Mizzi said: this is reported from many paths such that it reaches the level of a *Hasan* narration”, and the word: “knowledge” which is general covering all knowledge that is beneficial. And Abu Dawud, Ahmad, Ibn Hibban, and Al-Bayhaqi in *Al-Shu‘ab* all reported from Kathir b. Qays that he ﷺ said:

« مَنْ سَلَكَ طَرِيقًا يَطْلُبُ فِيهِ عِلْمًا سَلَكَ اللَّهُ بِهِ طَرِيقًا مِنْ طُرُقِ الْجَنَّةِ »

“*Whoever sets out on a path in search of knowledge, Allah sets him on a path from the paths of Paradise*” and the word: “knowledge” is general, covering all knowledge that is beneficial.

And in the noble Quran there are ideas and beliefs which contradict Islam such as:

﴿ وَمَا يَمْلِكُنَا إِلَّا أَلَّهُ هُوَ ﴾

“**And nothing destroys us but time.**” (TMQ 45:24) and other such examples, which indicate the permissibility of learning those ideas which contradict the Islamic ‘Aqeedah. Accordingly, to learn information without adopting it or believing in it is permissible and there is nothing wrong with it, but what is prohibited is to adopt the ideas that contradict the Islamic ‘Aqeedah. For example, the idea of Darwin says: people evolved from apes, whereas Allah (swt) said:

﴿إِنَّ مَثَلَ عِيسَىٰ عِنْدَ اللَّهِ كَمَثَلِ إِادَمَ ۖ خَلَقَهُ اللَّهُ مِنْ تُرَابٍ ثُمَّ قَالَ لَهُ رُّحْبَرٌ

﴿فَيَكُونُ﴾

“Indeed, the example of Jesus to Allah is like that of Adam. He created Him from dust; then He said to him, "Be," and he was.” (TMQ 3:59), and the communist theory of material evolution claims that material evolves eternally, and there is nothing else which developed it, and so there is no God, whereas Allah (swt) says:

﴿يَأَيُّهَا الَّذِينَ آمَنُوا إِذَا مَوَّلُوا بِاللَّهِ﴾

“O you who have believed, believe in Allah.” (TMQ 4:136), in other words, in His (swt) existence, and He (swt) says:

﴿الَّذِي خَلَقَ السَّمَاوَاتِ وَالْأَرْضَ وَمَا بَيْنَهُمَا﴾

“He who created the heavens and the earth and what is between them.” (TMQ 25:59). *The Book of Pre-Islamic (Jaahili) Literature* mentions that the story of Ibrahim was fabricated and that there is no substance in it but rather it was invented by the narrators, even though the story of Ibrahim is mentioned in the Quran and it tells it as a story that occurred in reality and so denying it is a rejection of the Quran. Therefore, these types of information and anything similar are not placed in the education curriculum if that would lead to them being adopted and believed in, and, therefore, they would not be a part of primary education, since this would lead to it being adopted (by the young children learning). In the same manner, if it is made part of the curriculum, it is imperative that its incorrectness be explained and that its ideas

are dismantled such that no one would adopt them or believe in them.

In this manner, the Islamic '*Aqeedah*' is made the basis for the education curriculum, so it is made the criterion for adopting information from the angle of confirming it as true and believing in it, and not simply from the angle that it is simply information.

Article 171

The education policy is to form the Islamic mentality and disposition. Therefore, all subjects in the curriculum must be chosen on this basis.

Article 172

The goal of education is to produce the Islamic personality and to increase peoples' knowledge connected with life's affairs. Teaching methods are established to achieve this goal; any method that leads to other than this goal is prevented.

The reality of these two articles is that the meaning of the educational policy is the principle, or principles, upon which information is given. As for the goal of the education, this is the objective which the provision of that information is aiming for. So the education policy is the basis which is built upon and the goal of education is the intention which is intended by establishing it.

Therefore, the education policy is connected to the subjects taught, and the goal of the education is connected to the methods of teaching. And the reality of man is that he comprehends things and actions, and so makes a judgement about them, and comprehends

things and actions and so inclines towards them, and there is nothing which is outside of these two issues. The reality of information is that it is either information which develops the mentality in order to judge upon actions and things, and information about those actual actions and things in order to utilise them, and there is nothing which is outside of these two issues. Islam made the Islamic ‘Aqeedah the basis for the Muslim’s life, and the basis for his thoughts, and in the same manner the basis for his inclinations. The verses of the Quran, and the narrations of the Prophet ﷺ which provoke thought, such as His (swt) words:

﴿وَيَنْهَاكُرُونَ فِي خَلْقِ السَّمَاوَاتِ وَالْأَرْضِ﴾

“And give thought to the creation of the heavens and the earth.” (TMQ 3:191), and the words of the Messenger ﷺ:

«تَفَكُّرٌ سَاعَةٌ خَيْرٌ مِّنْ عِبَادَةٍ سَنَةٍ»

“Contemplation for an hour is better than a year of worship” (reported by Al-Qurtubi in his *Tafsir*), are only because they provoke him to believe in Allah (swt). The verses and narrations which mention inclinations, such as His (swt) words:

﴿قُلْ إِنَّ كَانَ أَبَابَاكُمْ﴾ [التوبه ٢٤] إلى قوله: ﴿أَحَبُّ إِلَيْكُمْ مِّنْ أَنَّهُ لِلَّهِ وَرَسُولِهِ﴾

“Say, [O Muhammad], “If your fathers ”” until His (swt) words: “Are dearer to you than Allah, or His Messenger.” (TMQ 9:24), and the Messenger’s ﷺ words:

«لَا يُؤْمِنُ أَحَدُكُمْ حَتَّىٰ أَكُونَ أَحَبُّ إِلَيْهِ مِنْ وَالِدِهِ وَوَلِيِهِ وَالنَّاسِ أَجْمَعِينَ»

“None of you is a believer till I am dearer to him than his father, his child, and the whole of mankind.” (agreed upon from the narration of Anas), are only mentioned as inclinations restricted by the Islamic ‘Aqeedah. Therefore, it is imperative that the judgement of a Muslim upon actions and things is built upon the basis of the Islamic ‘Aqeedah, and in the same manner it is imperative that his inclinations towards actions and things are built upon the ‘Aqeedah.

When it is the information which forms his mentality, from the angle of the judgement upon things, and forms his disposition from the angle of the inclinations towards things, accordingly it is imperative that all of this information is built upon the Islamic ‘Aqeedah, irrespective of whether it is information to develop the mentality, or information which is adopted in order to utilise actions and things. In other words, it is imperative that the information which forms the mentality of the Muslim be built upon the Islamic ‘Aqeedah, and in the same manner it is imperative that the information which forms his disposition is built upon the ‘Aqeedah. And upon this basis, it is imperative that the education policy forms the Islamic mentality and disposition. The education policy has been deduced from the reality of information from its aspect of being information, and from the collection of verses connected to thought and inclinations, and linking them to the reality of information, and Article 171 was drafted upon this basis.

Article 172 has been taken from the action of the Messenger ﷺ in his ﷺ teaching of the Muslims, irrespective of whether that was in Makkah before the emigration, or in Madinah afterwards, since he ﷺ intended from teaching them that each one of them becomes an Islamic personality in his mentality and disposition - in other words, in their judgement upon actions and things and their inclinations towards them. So on top of teaching them the rules which treated their life’s issues, he ﷺ used to teach them the noble

values, such as how to seek the Pleasure of Allah (swt), such as honour and such as how to carry the responsibility of spreading the guidance to mankind, and guiding them to Islam, with an influential method, and productive styles. Allah (swt) said:

﴿أَدْعُ إِلَى سَبِيلِ رَبِّكَ بِالْحِكْمَةِ وَالْمَوْعِظَةِ الْخَيْرَةِ وَجَنِيدُهُمْ بِالْقِيَهُ هَيْ أَحْسَنُ﴾

“**Invite to the way of your Lord with wisdom and good instruction, and argue with them in a way that is best.**” (TMQ 16:125), and he ﷺ used to make them memorise the Quran, and teach them the rules of Islam and enjoin them to follow the orders and avoid the prohibitions, and alongside that he ﷺ would permit them to learn what they required for their livelihood, from trade and agriculture and industry. And so these actions of the Messenger ﷺ were what formed the Islamic personality, and these are the evidences for this article.

Article 173

There must be weekly classes in Islamic sciences and Arabic, with the same time and amount allocated as the classes for the rest of the sciences.

The taught subjects are of two types: scientific knowledge to develop the mind, in order that the person can judge the words, actions and objects from the angle of their reality and characteristics, and from the angle of their adaptation to human nature – such as chemistry, physics, astronomy, mathematics and other experimental sciences. This knowledge has no direct

relationship with the building of the personality. As for the *Shari'ah* knowledge of the words, actions and objects, in order to explain the defining *Shari'ah* rule (*Taklifi*), if it was obligatory, recommended, permitted, disliked or prohibited, or to explain the *Ahkam Al-Wad'* such as whether it was a cause, condition or prevention, or a concession (*Rukhsa*) or an original rule ('*Azimah'), or if it was valid (*Sahih*), void (*Batil*) or defective (*Fasid*), and accordingly the Islamic mentality is built. If these *Shari'ah* rules are accompanied by the goal of getting the Muslim to take an Islamic position towards objects, actions and words in terms of their inclinations towards or against them, and to take or leave them when fulfilling their bodily needs and instincts, then the Islamic disposition is built. The Islamic personality is built from the Islamic mentality and disposition, which makes the Islamic belief ('*Aqeedah') the basis for its thoughts and inclinations.**

Islam asks the Muslim to think about the creation of the universe, mankind and life, such as His (swt) words:

﴿وَيَنْفَكِرُونَ فِي خَلْقِ السَّمَاوَاتِ وَالْأَرْضِ﴾ [آل عمران ١٩١]، وقوله: ﴿أَفَلَا يَنْظُرُونَ إِلَى الْإِبْلِ كَيْفَ خُلِقَتْ﴾ [الغاشية]، وقوله: ﴿كَذَلِكَ يُخَيِّرُ﴾
 ﴿اللهُ أَعْلَمُ وَبِرِيكُمْ إِذَا يَتَّبِعُونَ﴾

“And give thought to the creation of the heavens and the earth.” (TMQ 3:191): “Then do they not look at the camels - how they are created?” (TMQ 88:17) and: “Thus does Allah bring the dead to life, and He shows you His signs that you might reason.” (TMQ 2:73). In the same manner, Islam also asks the Muslim to adhere to the *Shari'ah* rules in his laws, actions and inclinations: He (swt) said:

﴿فَلَا وَرِبَّكَ لَا يُؤْمِنُونَ حَتَّىٰ يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ ثُمَّ لَا يَسْجُدُوا
 فِي أَنفُسِهِمْ حَرَجًا مِّمَّا قَضَيْتَ وَسُلِّمُوا تَسْلِيمًا﴾ [النساء]، قوله تعالى: ﴿وَمَا
 أَتَنَّكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَنَّكُمْ عَنْهُ فَأَتَتُهُوَا﴾ [الحشر ٧]، قوله: ﴿لَا تَشْخُدُوا
 أَبَاءَكُمْ وَلَا خَوْنَكُمْ أَوْلَيَاءَ إِنْ أَسْتَحْبُوا الْكُفَّارَ عَلَى الْإِيمَانِ﴾ [التوبه ٢٣]، قوله:
 ﴿وَقُلْ أَعْمَلُوا فَسَيَرِي اللَّهُ عَمَلَكُمْ وَرَسُولُهُ وَالْمُؤْمِنُونَ وَسَرِّدُونَ إِلَى عَلِيمٍ
 الْغَيْبِ وَالشَّهَدَةِ فَيُنَيِّعُكُمْ بِمَا كُنْتُمْ تَعْمَلُونَ﴾

“But no, by your Lord, they will not [truly] believe until they make you, [O Muhammad], judge concerning that over which they dispute among themselves and then find within themselves no discomfort from what you have judged and submit in [full, willing] submission.” (TMQ 4:65), and: “And whatever the Messenger has given you - take; and what he has forbidden you - refrain from.” (TMQ 59:7), and: “O you who have believed, do not take your fathers or your brothers as allies if they have preferred disbelief over belief.” (TMQ 9:23), and: “And say, "Do [as you will], for Allah will see your deeds, and [so, will] His Messenger and the believers. And you will be returned to the Knower of the unseen and the witnessed, and He will inform you of what you used to do.”” (TMQ 9:105).

Just as it is requested from the school to be the first incubator to build the distinguished Islamic personality, in the knowledge of the rules of the basis of jurisprudence (*Usul Al-Fiqh*), language and *Tafsir*, it is also requested to be the first incubator to build the distinguished Islamic personality with the scientific knowledge such as atomic science, astronomy and computing. The

Islamic *Ummah* which gave birth to leaders in politics, governance and *Jihad* such as Abu Bakr (ra), Khalid (ra) and Salah Al-Deen, is the same *Ummah* which gave birth to the scholars in jurisprudence and science such as Al-Shafi'i, Al-Bukhari, Al-Khawarizmi and Ibn Al-Haytham. The goal of teaching all of this knowledge in the school stage is to build the Islamic personality of the student, and to prepare him to enter into the realm of practical life, or to prepare him to continue higher studies in order to create distinguished personalities which are necessary to raise the intellectual and scientific level of the *Ummah*, and to prepare it to lead the world to take all the people from the darkness of disbelief to the light of Islam, and from the oppression of man made law to the justice of the *Shari'ah* law. And in the same manner to work to harness what is in the heavens and the earth for the benefit and well being of mankind in that which pleases Allah (swt), in accordance with His (swt) words:

﴿ وَأَبْتَغِ فِيمَا ءاتَكَ اللَّهُ الْدُّنْيَا الْآخِرَةُ وَلَا تَنسِكْ نَصِيبَكَ مِنْ ﴾
الْدُّنْيَا ﴿

“But seek, through that which Allah has given you, the home of the Hereafter; and [yet], do not forget your share of the world.” (TMQ 28:77).

Based upon this, there will be classes in scientific and *Shari'ah* knowledge, and it is obligatory to balance the classes to meet the requirements of the two sections in order for the Muslim to be capable to live on this earth which Allah (swt) made him a successor upon, in a manner which Allah (swt) and His Messenger ﷺ love.

The scientific knowledge that we are concerned with are those that do not have a direct relationship with the viewpoint about life, and do not emanate from the Islamic belief, but rather are built upon it, such as the necessary skills and knowledge to prepare the student to enter the realm of practical life. The first thing that the student is taught are those sciences that are necessary to interact with the environment he lives in such as mathematics and the general sciences about the tools and machinery used such as electronic and electrical equipment, and domestic tools. And in the same manner the principles and rules of traffic in the roads and streets, and the teaching of these subjects would take into account the environment in which the students live, such as if it was industrial, agricultural or trade, and if it was mountainous, desert or a plain, and whether it was hot or cold. The goal in teaching these subjects until the age of ten is to enable the student to interact with the things around them, and to utilise them according to their age and needs.

After the age of ten, they start to be taught the branches of mathematics in stages, and similarly the other sciences such as physics, chemistry and biology, and beneficial sports such as swimming, jumping and shooting at targets. After puberty they are taught military skills under the supervision of the army, and then they can continue in the higher education institutions and universities to learn beneficial knowledge from the sciences to the extent necessary.

Article 174

A distinction should be drawn between the empirical sciences such as mathematics on the one hand and the cultural sciences on the other. The empirical sciences and all that is related to them are taught according to the need and are not restricted to

any stage of education. As for the cultural sciences, they are taught at the primary and secondary levels according to a specific policy which does not contradict Islamic thoughts and rules. In higher education, these cultural sciences are studied like other sciences provided they do not lead to a departure from the education policy and its goal.

Its evidence is the generality of the evidences which permit learning knowledge, since they encompass all knowledge, and so it is permitted for the Muslim to learn all knowledge. However, learning some knowledge leads to deviation of the beliefs, or weakness in the '*Aqeedah*' and so these types of knowledge are forbidden from being taught as long as they result in that, and if they lost that effect then it would be permitted to learn it, applying the principle: "*If one type of a permitted thing leads to a harm, only that one is prohibited, and the thing remains permitted*".

Accordingly, the general evidences which permit learning and the *Shari'ah* principle are the proof for this article.

Since learning what causes a deviation and weakness in the beliefs easily influences children, it is, therefore, prohibited to teach anything of these types of knowledge in the primary and secondary stages of education. As for higher education, then knowledge such as philosophy and anything similar are taught, in order to refute them and show their falsehood, and nothing from these subjects is taught without also teaching its refutation and invalidity alongside it. The noble Quran mentions the ideas and beliefs of others, but they are mentioned in order to explain their invalidity and to reject them. And in the same way, when the educational programme is drafted, these types of subjects are drafted in higher education in order to refute them and explain their falseness.

Article 175

The Islamic culture must be taught at all levels of education. In higher education, departments should be assigned to the various Islamic disciplines as will be done with medicine, engineering, physics and anything similar.

The evidence for the article is the action of the Messenger ﷺ, since he ﷺ used to teach the rules of Islam to men, women, the elderly and the youth, which indicates that Islam teaches every generation, and so it is learnt at all levels of education. Knowledge other than the laws of Islam such as the sciences and industries is permitted, however its reality is that they are studied after gaining basic knowledge that is essential such as the principles that are required to enter some of the sciences and industries such as medicine and engineering, and so they are taught after this information has been acquired. Therefore, their teaching is done in higher education. Built upon the reality of the information and the action of the Messenger ﷺ, this article was drafted, and so this is what necessitated it.

Article 176

Arts and crafts may be related to science, such as commerce, navigation and agriculture. In such cases, they are studied without restriction or conditions. Sometimes, however, arts and crafts are connected to culture and influenced by a particular viewpoint of life, such as painting and sculpting. If this viewpoint of life contradicts the Islamic viewpoint of life, these arts and crafts are not taken.

The evidence is the evidence for Article 162, which was the generality of the evidences which permitted knowledge/science, and the principle that one type of a permitted thing is prohibited if it leads to harm, because the arts and industries are information, and so they are permitted since they are encompassed by the generality of the evidences regarding knowledge. If they bring about harm due to their being influenced by a particular viewpoint then they are prohibited. This is the case if there is no text forbidding it. As for when there is a text which forbids it, such as drawing something which has a soul (*Ruh*), whether human, animal, bird or otherwise, or sculpting something with a soul, then it is prohibited because it is forbidden due to the narrations reported which decisively prohibit drawing and sculpting.

Article 177

The State's has one unique curriculum and no other curriculums are allowed to be taught. Private schools are allowed as long as they adopt the State's curriculum and establish themselves on the State's educational policy and accomplish the goal of education set by the State, on condition they do not allow mixing between male and female, whether student or teacher, and they are not specific to a sect, religion, school of thought, race or colour.

To enforce a single education curriculum upon the people is a permitted issue, since it is from the permitted issues which have been left to the *Imam* to enforce upon the people with a particular style if chosen, which is what 'Uthman bin Affan (ra) did when he copied the Quran and sent it to the different regions of the State. All types of knowledge are permitted, and the methods of teaching are all permitted, since they are all part of information.

However, organising this information which is taught or upon which teaching is carried out in a specific curriculum is a style to systemise the education, similar to the style to organise the departments of the State. So the *Imam* can adopt a specific style and make the people abide by it, since it is from the issues which are part of the governing of the affairs, and, therefore, obedience to him in it would be obligatory.

The State can prohibit any teaching which is carried out upon alternative curricula with the evidence that it is from the issues that have been given to the *Imam* to deal with according to his opinion and *Ijtihad*, and it is permitted for him to select a particular style to undertake it. If he decided upon one particular style, obedience to him would be obligatory, and it would be forbidden to contradict him, since obedience to him is mentioned in the Quran:

﴿أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولَئِكُمْ أَنْتُمْ مُنْكَرٌ﴾

“O you who have believed, obey Allah and obey the Messenger and those in authority among you.” (TMQ 4:59), and mentioned in the words of the Prophet ﷺ:

«وَمَنْ يُطِعْ الْأَمِيرَ فَقَدْ أَطَاعَنِي»

“Whoever obeys the Amir (leader) obeys me” (agreed upon from the narration of Abu Hurayrah), and his ﷺ words:

«اسْمَعُوا وَأَطِيعُوا وَإِنْ اسْتُعْمَلْ عَلَيْكُمْ عَبْدٌ حَبَشَيٌّ كَانَ رَأْسَهُ زَبَيْلٌ»

“Hear and obey even if an Abyssinian slave whose head is like a raisin is placed in authority over you” (reported by Al-Bukhari from Anas). This is only obedience to him in that which has been left for him to act in according to his opinion and *Ijtihad*,

and obedience to him in this circumstance is obedience to the ones in authority. As for the *Shari'ah* rules such as the recommended, permitted, obligatory, and the forbidden, then obedience to him in these issues if he ordered them would be obedience to Allah (swt) and not to him, due to the evidence that if he ordered them to commit a sin he is not obeyed. It is reported from Nafi' from Abdullah that the Messenger ﷺ said:

«السَّمْعُ وَالطَّاعَةُ عَلَى الْمَرْءِ الْمُسْلِمِ فِيمَا أَحَبَّ وَكَرِهَ مَا لَمْ يُؤْمِنْ بِمَعْصِيَةِ، فَإِذَا أُمِرَّ بِمَعْصِيَةٍ فَلَا سَمْعَ وَلَا طَاعَةً»

“Listening and Obedience are binding on a Muslim whether he likes or dislikes, so long as he is not commanded for disobedience (to Allah). If he is commanded to disobedience (to Allah), no listening and disobedience are binding (on him).” (reported by Al-Bukhari). And Ahmad reported with an authentic chain from ‘Imran b. Husayn:

«لَا طَاعَةَ لِمُخْلُوقٍ فِي مَعْصِيَةِ اللَّهِ تَبَارَكَ وَتَعَالَى»

“No obedience to created people when asking for disobedience to Allah the glorified and exalted.” Therefore, his rights in governing the affairs are in what has been left to his opinion and *Ijtihad*, and the obedience to his order by those who were ordered by it is in these issues. So if he governed permitted issues upon a particular basis, such as drafting a specific curriculum which was then ordered to be implemented and for any difference to be prohibited, consequently obedience to him would be obligatory.

This is with respect to the fact that the State has one unique education curriculum.

As for the issue of private schools, the Messenger ﷺ used to send teachers to people in order to teach them Islam, and would permit the Muslims to teach other, which indicates that every person can teach whoever he wishes, whether for a fee or for free, and he is permitted to open a school. However, like the rest of the individual subjects, he is compelled to follow the State curriculum, in other words, the curriculum that the *Khalifah* ordered, due to the evidence that was aforementioned regarding obedience to whatever the *Imam* ordered.

If it is asked how can the *Dhimmi* teach their children their religion if the private schools have to be in agreement with the syllabus of the Islamic State – then the answer is that they are not prohibited from teaching their religion and rituals in their houses and places of religious worship, or in other words, in places other than the public life such as the schools since this proceeds upon the governance that the State lays down. The *Dhimmi* used to learn their rituals in their churches and their churches were present at the time of the Messenger ﷺ and the righteous *Khulafaa'*. Al-Bukhari reported from Abu Hurayrah who said:

«بَيْنَمَا نَحْنُ فِي الْمَسْجِدِ إِذْ خَرَجَ عَلَيْنَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ: انْطَلِقُوا إِلَى يَهُودَ، فَخَرَجْنَا مَعَهُ حَتَّىٰ جِئْنَا بَيْتَ الْمِدْرَاسِ، فَقَامَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَنَادَاهُمْ: يَا مَعْشَرَ يَهُودَ، أَسْلِمُوا تَسْلِمُوا...»

“While at the mosque, the Messenger came out to us and said: go to the Jews, and so we went with him until we went to the house of Midras. He stood up and addressed them, "O assembly of Jews! Embrace Islam and you will be safe" ...” and Midras is the place of their worship which they used to read the Torah and in which they would also gather for prayers on their religious festivals. It is mentioned in the *Al-Muhit* dictionary: “Al-midras:

the place which the Quran is read, and from it is the madras of the Jews”, in other words, where the Jews would read their Torah. In *Lisan Al-'Arab* it mentions: “Fuhr of the Jews: the place of their madras which they would gather in on their religious festivals to pray there”. In other words, at the time of the Messenger ﷺ they were not prohibited from learning their religion in their churches and synagogues. This continued throughout the time of the righteous *Khulafaa'*: it is reported by 'Abd alRazzaq in his *Musannaf* from 'Ali b. Abi Talib (ra): “he saw a people with their clothes hanging low and so he said: As though they were Jews leaving their Fuhr. We asked 'Abd Al-Razzaq what is their *Fuhr*? He said their synagogue”. In other words, 'Ali (ra) described those who prayed with their clothes hanging low as being like Jews who left their synagogues after finishing their worship inside. In other words, – the *Dhimmis* used to practice their religions and do their rituals of worship in their churches and synagogues, or in the places connected to them, and they did not have specific schools according to the known meaning.

As for the evidence to prohibit mixing in private schools, in the same way that it is prohibited in the schools of the State:

- Al-Bukhari reported from Abu Sa'id Al-Khudri who said:

«قَالَتْ النِّسَاءُ لِلنَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: غَلَبَنَا عَلَيْكَ الرِّجَالُ فَاجْعَلْنَا يَوْمًا مِنْ نَفْسِكَ، فَوَعَدَهُنَّ يَوْمًا لَقِيهِنَّ فِيهِ، فَوَعَطْهُنَّ أَمْرَهُنَّ، فَكَانَ فِيمَا قَالَ لَهُنَّ: مَا مِنْ كُنْ نَّ امْرَأَةٌ تُقْدَمُ ثَلَاثَةً مِنْ وَلَدِهَا إِلَّا كَانَ لَهَا حِجَابًا مِنَ النَّارِ، فَقَالَتْ امْرَأَةٌ: وَاثْتَتِينِ؟ فَقَالَ: وَاثْتَتِينِ»

“Some women requested the Prophet to fix a day for them as the men were taking all his time. On that he promised them one day for religious lessons and commandments. Once during such a lesson the Prophet said, "A woman whose three children die will be shielded by them from the Hell fire." On

that a woman asked, "If only two die?" He replied, "Even two (will shield her from the Hell-fire)." In other words, the teaching of the women was separated from that of the men, and it was not mixed. The prayer was also done in separate rows, and when they left the mosque they would not leave together thus mixing, rather the Messenger ﷺ and the companions who had prayed would wait until the women left and then they would leave.

- Al-Bukhari reported from Umm Salamah:

«أَنَّ النَّبِيَّ ﷺ كَانَ إِذَا سَلَمَ يَمْكُثُ فِي مَكَانِهِ يَسِيرًا، قَالَ ابْنُ شِهَابٍ: فَنَرَى، وَاللَّهُ أَعْلَمُ، لِكِنْ يَنْفَدِدُ مَنْ يَنْصَرِفُ مِنَ النِّسَاءِ». وَفِي رَوَايَةِ عَنْهُ أَيْضًا قَالَتْ: «كَانَ يُسَلِّمُ، فَيَنْصَرِفُ النِّسَاءُ فَيَدْخُلُنَّ بُيُوتَهُنَّ مِنْ قَبْلِ أَنْ يَنْصَرِفَ رَسُولُ اللَّهِ ﷺ»

"The Prophet after finishing the prayer with Taslim used to stay at his place for a while." Ibn Shihab said, "I think (and Allah knows better), that he used to wait for the departure of the women who had prayed", and in another report: "When the Prophet finished the prayer with Taslim, the women would depart and enter their houses before Allah's Messenger departed."

And, therefore, teaching must not be mixed.

As for the issue of the private schools not being specific to a sect, religion, school of thought, race or colour – this is because schools established on this basis lead to effects upon the unity of the State and focus upon points of difference, especially since schools play an important role in building the mentality and disposition of the students. At the end of the 'Uthmani Khilafah such schools were a destructive element in the body of the State. Therefore, these schools are prohibited due to what damage they

produce and that they lead to the *Haram*, in other words, the evidence is the rule of harm and the rule that states that: "The means to something forbidden is also forbidden".

This is apart from the call that is found in the Quran and the *Sunnah* to know other people and to discard tribalism, and not to differentiate on the basis of race or colour. Allah (swt) says:

﴿يَأَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُم مِّن ذِكْرٍ وَأُثْنَى وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ
لِتَعْرَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتَقْنَعُكُمْ إِنَّ اللَّهَ عَلَيْمٌ حَسِيرٌ﴾

"O mankind, indeed We have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous of you. Indeed, Allah is Knowing and Acquainted." (TMQ 49:13). And the Messenger ﷺ said in a narration reported by Muslim from Abu Hurayrah:

«مَنْ خَرَجَ مِنَ الطَّاغِيَةِ وَفَارَقَ الْجَمَاعَةَ فَمَاتَ مِيتَةً جَاهِلِيَّةً، وَمَنْ قَاتَلَ تَحْتَ رَايَةِ عِمَّيَّةٍ يَغْضَبُ لِعَصَبَةٍ أَوْ يَدْعُو إِلَى عَصَبَةٍ أَوْ يَنْصُرُ عَصَبَةً فَقُتِلَ فَقْتَلَةً جَاهِلِيَّةً»

"One who defected from obedience (to the Amir) and separated from the main body of the Muslims-if he died in that state-would die the death of one belonging to the days of *Jahiliyya*. One who fights under the banner of a people who ate blind (to the cause for which they are fighting. i. e. do not know whether their cause is just or otherwise), who gets flared up with family pride, calls, (people) to fight for their. family honour, and supports his kith and kin (i.e. fights not for the cause of Allah but for the sake of this family or tribe) -if he is killed (in this fight), he dies as one belonging to the days of *Jahiliyya*". And it is reported by Ahmad with a chain from Abu Nadrah authenticated by

Al-Zayn: Someone who heard the sermon of the Messenger of Allah ﷺ in the middle of the days of *Tashriq* told me that he ﷺ said: *O people – your Lord is one, and your father is one, there is no preference for an Arab over a non-Arab, nor a non-Arab over an Arab, nor for the red over the black, nor the black over the red, except in Taqwa (piety). Have I not conveyed? They said: The Messenger of Allah ﷺ has conveyed.”*

These are all the evidences for the article.

Article 178

It is an obligation upon the State to teach every individual those matters that are necessary for the mainstream of life, male or female, in the primary and secondary levels of education. This must be provided free of charge to everyone, and the State should, to the best of its ability, provide the opportunity for everyone to continue higher education free of charge.

Its evidence is that it is from the essential interests and utilities for people, since teaching the individuals what they require in mainstream life is from the essential interests, since it achieves benefit and repels harm. This is why it is obligatory upon the State to provide for these interests according to what mainstream life necessitates, and according to the number of youth present that require to be taught those issues. Primary and secondary education of the masses has become a necessity due to the nature of life between nations in this era, and is no longer from the non-essential issues, so accordingly the primary and secondary education for every individual of what is required to partake in the mainstream of life is an obligation upon the State, while it remains one of the essential interests. Therefore, it is obligatory upon the State to

provide sufficient primary and secondary schools for all the subjects of the State who wish to study and provide them with what they require to partake in life's affairs free of charge. The Messenger ﷺ made the ransom of the disbelieving prisoners that they should teach ten of the Muslim children, and that was from the war booty which is part of what the *Khalifah* may spend in the interests of the Muslims, and is evidence that the spending upon education is without anything given in exchange.

Higher education is also from the interests, so anything from it which is part of the necessities such as medicine must be provided by the State, in the same manner as primary and secondary education, since it achieves benefit and repels harm and is from the issues that the *Shari'ah* obligated upon the State. As for anything from the non-essential issues, such as literature, then the State should provide for it if the finances were available.

The primary and secondary teaching, along with whatever is essential for the *Ummah* in terms of further education, is considered part of the obligatory interests upon the expenditure of the *Bayt Al-Mal*, without anything in return.

Article 179

The State ought to provide the means of developing knowledge, such as libraries and laboratories, in addition to schools and universities, to enable those who want to continue their research in the various fields of knowledge, like jurisprudence, narrations and *Tafsir*, and thought, medicine, engineering and chemistry, and such as inventions and discoveries and so on. This is done to create an abundance of *Mujtahidun*, outstanding scientists and inventors.

The evidence for the article are the words of the Prophet (saw):

«الإِمَامُ رَاعٍ وَهُوَ وَمَسْؤُلٌ عَنْ رَعْيِهِ»

“The Imam (ruler) is a guardian and he is responsible for his subjects” (reported by Al-Bukhari from Abdullah Bin Umar), and the principle: “*That, without which the obligation cannot be accomplished, is itself an obligation*”. Libraries, laboratories and the rest of the means of developing knowledge are part of the affairs of the *Ummah* which the *Imam* must govern, and if he falls short he is accounted over it. If the *Ijtihad* in jurisprudence and the creation of inventions which are necessary for the sake of military preparations, are not possible without these means of developing knowledge, then to provide these means becomes an obligation upon the *Khalifah* in accordance with the principle: “*That, without which the obligation cannot be accomplished, is itself an obligation*”. If they help to achieve these goals, and simplify the issue of *Ijtihad* and invention, then they are part of the governing of the affairs which achieve benefits; in which case they would not be obligatory, and so if the State had the finances it would establish them and otherwise not. Due to all of this, the provision of libraries, laboratories and the remaining means to develop knowledge fall under what the *Imam* must provide, or in other words, what falls upon the State to provide.

Article 180

The exploitation of writing books for educational purposes at whatever level is strictly forbidden. Once a book has been printed and published nobody has the right to reserve the publishing and printing rights, including the author. However, if they were ideas he had, which were not yet printed or

published, the owner has the right to be paid for transferring these ideas to the public as he paid for teaching.

The evidence for it is the permissibility of taking a fee for teaching and the permission of knowledge for people. As for the permissibility of taking a fee for education, it is confirmed from the words of the Messenger ﷺ:

«إِنَّ أَحَقَّ مَا أَحَدُثُمْ عَلَيْهِ أَجْرًا كِتَابُ اللَّهِ»

“You are most entitled to take wages for Allah's Book” (reported by Al-Bukhari from Ibn ‘Abbas), and so by greater reasoning a fee can be taken for teaching anything else; additionally it is confirmed from the fact that the Messenger ﷺ allowed the prisoners from the battle of Badr to each teach ten Muslims as their ransom, which is making a payment for education. Authoring is the writing of knowledge, or in other words, the giving of knowledge through writing and so it is like imparting it verbally. Knowledge can be passed to people verbally or in a written form and in both circumstances it is permitted to take a fee for it. However, if the teacher imparts something verbally or through writing, the knowledge that the learner took becomes possessed by him, and so he has the right to impart that knowledge to anyone else whether verbally or through writing, and he has the right to take a fee for it. The prisoners from Badr had no right over those who learnt reading and writing from them other than their fee, and those who learnt from them could teach others reading and writing for a fee without the permission of their teachers, and without their teachers having any right.

Additionally, knowledge, from the angle that it is permitted, and the meaning of its being permitted is that it is permissible for anyone to take it, and permitted for anyone who teaches it to take a

fee, and not simply the teacher who taught it originally. So from this it is seen that the knowledge is possessed by anyone who knows it, and is not the sole possession of the one who taught it, and it is the possession of the one who knows it as long as it remains with him, and so he can take a fee for teaching it to someone else, or can teach it to others for free. So if it emerges from him through his teaching of it to an individual or a group, or talking about it in public, or conveying it to the people by any means, it becomes permissible for all of the people in accordance with the evidences which generally permit knowledge, and it becomes permissible for whoever took that knowledge individually or part of a group, to give it to whoever they wish irrespective of whether the one who taught them initially gave them permission or not, and whether they were content for that to happen or not.

This is evidence that no one possesses the right to publish since it is knowledge, so as long as it remains with him he has the right to charge a fee for it, and if he imparts it to the people verbally or through writing, by any means at all, it becomes permitted for all the people, and it becomes permitted for every one of them to teach it to someone else and to charge a fee for teaching. So to make the rights of publishing specific to the author is forbidding the permitted; forbidding knowledge by prohibiting it being taken except with permission and forbidding charging a fee for it by prohibiting it being taught for a fee except with permission, and so accordingly it is not permissible for anyone to possess publishing rights.

Foreign Policy

Article 181

Politics is taking care of the affairs of the *Ummah* domestically and internationally. It is performed by the State and the *Ummah*. The State takes on this task practically through government, and the *Ummah* accounts the State upon it.

This article is the definition of politics and this is a general definition held by everyone since it characterises the reality of politics as what it actually is. So it is similar to the definition of the mind, the definition of the truth, the definition of authority and other definitions from the meanings which have a single reality for all people which they do not differ over since it is a perceptible reality, and so rather they only differ over its rules. In addition to that, the linguistic meaning of politics (*Saasa, Yasuso, Siyasah*) is governing of the affairs; it is mentioned in the *Al-Muhit* dictionary: “I governed the citizens *siyasatan* – meaning I commanded them and I forbade them”, and this is the governing of affairs through commandments and prohibitions. Additionally there are narrations related regarding the actions of the ruler, accounting the ruler and concern for the Muslim affairs, and the definition has been derived from all of these; so the words of the Prophet ﷺ in an agreed upon narration, the wording here from Al-Bukhari from Ma’qal b. Yasar:

«مَا مِنْ عَبْدٍ يَسْتَرْعِيهُ اللَّهُ رَعِيَّةً فَإِنْ يُحْطِمْهَا بِنُصُبْهِ إِلَّا لَمْ يَجِدْ رَائِحَةَ الْجَنَّةِ»

“Any slave whom Allah makes him in charge of subjects and he is not sincere to them, Allah will make Jannah unlawful for him”, and his ﷺ words:

«مَا مِنْ وَالٍ يَلِي رَعِيَّةً مِنَ الْمُسْلِمِينَ فَيَمُوتُ وَهُوَ غَاشٌ لَهُمْ إِلَّا حَرَمَ اللَّهُ عَلَيْهِ»
 «الجَنَّةَ»

“If any ruler having the authority to rule Muslim subjects dies while he is deceiving them, Allah will forbid Paradise for him.”, and his ﷺ words:

«سَتَكُونُ أُمَّرَاءٌ فَتَعْرِفُونَ وَتُنْكِرُونَ، فَمَنْ عَرَفَ بِرَبِّهِ، وَمَنْ أَنْكَرَ سَلَمَ، وَلَكِنْ مَنْ رَضِيَ وَتَابَعَ، قَالُوا: أَفَلَا نُقَاتِلُهُمْ؟ قَالَ: لَا مَا صَلَوْا»

“There will be rulers (Amirs) and you will like their good deeds and dislike their bad deeds. One who sees through their bad deeds, and tries to prevent their repetition by his band or through his speech, is absolved from blame. But one who approves of their bad deeds and imitates them is spiritually ruined. People asked (the Holy Prophet): Shouldn’t we fight against them? He replied: No, as long as they establish their prayers.” (reported by Muslim from Umm Salamah), and his ﷺ words:

«وَمَنْ أَصْبَحَ وَهُمْ بِغَيْرِ اللَّهِ فَلَيْسَ مِنَ اللَّهِ فِي شَيْءٍ، وَمَنْ لَمْ يَهْتَمْ لِلْمُسْلِمِينَ فَلَيْسَ مِنْهُمْ»

“Whoever wakes up and his concern is other than Allah, then he is not from Allah, and whoever is not concerned with the Muslims then he is not from them” reported by Al-Hakim in *Al-Mustadrak* from Ibn Mas’ud, and it is reported from Jarir b. ‘Abd Allah who said:

«بَأَيْمَانِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: إِقَامِ الصَّلَاةِ، وَإِيتَاءِ الزَّكَاةِ، وَالنُّصْحِ لِكُلِّ مُسْلِمٍ»

“I gave pledge of allegiance to the Messenger of Allah ﷺ on the observance of prayer, payment of Zakah, and sincerity and

well-wishing for every Muslim." (agreed upon), and it is reported from Jarir b. 'Abd Allah who said:

«أَتَيْتُ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قُلْتُ: أُبَا يُعْلَكَ عَلَى الْإِسْلَامِ، فَشَرَطَ عَلَيَّ: وَالنُّصْحُ لِكُلِّ مُسْلِمٍ»

"I went to the Prophet ﷺ and gave him the pledge of allegiance upon Islam, and he made it a condition to give the advice to every Muslim." (reported by Al-Bukhari).

The definition of politics deduced from all of these narrations, whether related to the ruler and his undertaking of ruling, or to the *Ummah* and its accounting of the ruler, or to the relationship of the Muslims with each other in being concerned over their issues and advising each other, is that it is the governing of the affairs of the *Ummah*, and therefore the definition of politics, which this article mentioned, is a *Shari'ah* definition deduced from the *Shari'ah* evidences.

Article 182

It is absolutely forbidden for any individual, party, group or association to have relations with a foreign state. Relations with foreign countries are restricted to the State alone because the State has the sole right of governing the affairs of the *Ummah* practically. The *Ummah* can account the State regarding foreign relations.

Its evidence is the words of the Prophet ﷺ:

«الإِمَامُ رَاعٍ وَهُوَ وَمَسْؤُلٌ عَنْ رَعْيِهِ»

“The Imam (ruler) is a guardian and he is responsible for his subjects” (reported by Al-Bukhari from ‘Abd Allah b. Umar), and the *Shari’ah* gave the practical undertaking of the governing of the affairs which would be binding to the ruler alone, and so it is not permitted for the subjects to carry out the actions of the ruler and it is not permitted for any of the Muslims to carry out the actions of the ruler unless they were appointed to do that according to the *Shari’ah*, either through a pledge of allegiance from the people if he was the *Khalifah*, or by appointment from the *Khalifah*, or from one of his assistants or governors whom had given the right to make appointments. Anyone who had not been appointed through the pledge of allegiance, and had not been appointed by the *Khalifah*, is not permitted to undertake anything from the practical governing of the affairs of the *Ummah*, domestically or internationally.

It is imperative here that this rule is clarified from the angle of the evidence, and the reality upon which the evidence applies. As for the evidence, the authority has been given by the *Shari’ah* to the ruler alone and governing the people has been left to the ruler alone; the Messenger ﷺ said:

«مَنْ كَرِهَ مِنْ أَمْرِهِ شَيْئًا فَلْيَصْبِرْ عَلَيْهِ، فَإِنَّهُ لَيْسَ أَحَدٌ مِنَ النَّاسِ خَرَجَ مِنَ السُّلْطَانِ شِبْرًا فَمَاتَ عَلَيْهِ إِلَّا مَاتَ مِيتَةً جَاهِلِيَّةً»

“Whoever dislikes a thing done by his leader (Amir) should be patient over it, for anyone from the people who withdraws (his obedience) from the government, even to the extent of a handspan and died in that conditions, would die the death of one belonging to the days of Jahiliyya.” (agreed upon from the narration of Ibn ‘Abbas), and so it made rebellion against him rebellion against the authority, and consequently in that case

he is the one who alone possesses the authority. The Messenger ﷺ said:

«كَانَتْ بَنُو إِسْرَائِيلَ تَسْوُسُهُمُ الْأَئِمَّاءُ، كُلَّمَا هَلَكَ نَبِيٌّ خَلَفَهُ نَبِيٌّ، وَإِنَّمَا لَا يَنْبَغِي
بَعْدِي، وَسَيَكُونُ خَلَفَاءً»

“Banu Isra'il were ruled over by the Prophets. When one Prophet died, another succeeded him; but after me there is no Prophet and there will be Khulafaa” (agreed upon from the narration of Abu Hurayrah), and its meaning is that the Muslims are ruled by the *Khulafaa'*, and, therefore, the one who rules the Muslims has been specified. The understanding from this is that other than the *Amir* would not be an authority and that other than the *Khulafaa'* do not rule. This is evidence that the governing of the affairs is for the ruler alone and not for anyone else. Additionally, the action of the Messenger ﷺ shows that he ﷺ was the authority, and undertook the ruling of the people with it by his ﷺ characteristic of being the Head of State, and he ﷺ was the one who appointed whoever would undertake the actions of authority or the actions of ruling the subjects. So he ﷺ appointed the one who would take his ﷺ place in Madinah whenever he ﷺ went out for any of the battles, and he ﷺ appointed the governors, judges, money collectors, and whoever undertook an interest such as distributing water, estimating the amounts of fruit (for tax purposes), and so on. This is all evidence that the authority and ruling the people is restricted to the ruler, in other words, to the *Khalifah* and whoever the *Khalifah* appointed, to the *Amir* and whoever the *Amir* appointed. The authority is the governing of the affairs of the people that is binding upon them, and ruling the subjects is reported in the words of the Messenger ﷺ: “*were ruled by*”, which is the governing of the people that is binding upon them. Built upon this is that governing the affairs of the people is a

binding governance; in other words, the undertaking of the responsibility of the ruler is restricted to the ruler, and so it is completely forbidden for anyone else to undertake it, since the *Shari'ah* gave the authority and looking after people's affairs to the *Khalifah* and whoever he appoints. So if anyone other than the *Imam* or those appointed by him carries out the actions of ruling and authority, and takes upon themselves ruling the people, their action contradicts the *Shari'ah* and is considered to be void, and every void action is forbidden (*Haram*), and so it is not permitted for anyone other than the *Khalifah* or who he appointed, in other words, other than the ruler, to undertake any action of ruling and authority. Consequently, he does not undertake the governing of the affairs of the people in a binding manner, in other words, he does not rule the people, since this is from the actions of the ruler and it is not permitted for anyone other than the ruler to carry it out.

This is from the angle of the evidence; as for from the angle of the reality, the undertaking of governing some of the affairs in a binding manner by a group is from the understanding of the democratic rule. The democratic rule is made up of institutions, the highest of which is the cabinet, in other words, the government, but there are others who carry out governing some of the affairs in a binding manner, or in other words, undertake ruling in some particular area. For example, there are unions, so the lawyers' union undertakes governing the affairs of the lawyers in their professional capacity, and this is binding upon them and so they have authority over them in specific issues; it grants them the right to practise law and signs off on any punishments upon them, and sets up a retirement fund for them, and other things that are from the actions of ruling and authority which the State appointed to it in regards to the legal profession, and its judgement is implemented just like the judgement of the cabinet without any difference. This is the same with the doctors' union and the rest of the unions. This

is the reality upon which the evidence applies with respect to within the State. Internationally, some of the democratic countries permit the opposition party to communicate with other states, and gives it the right to conduct negotiations with those states while it is not ruling, and it has agreements with other states regarding issues connected to the relationships between the two states that they will implement once they get into power. This is the reality upon when the evidence applies with respect to international affairs.

Therefore, this reality which is that some institutions such as syndicates undertake governing some of the affairs domestically in a binding manner, and some institutions such as the political parties undertake some of the affairs internationally in a manner which is binding, is not at all permitted by Islam. This is because the authority and undertaking ruling of the people has been given to the *Khalifah* or *Amir* alone, or to whom the *Amir* or *Khalifah* appointed, and so it is not permitted for anyone else to undertake a single issue from it since this would contradict the *Shari'ah*.

Additionally, undertaking the governing of the affairs in a manner that is binding is a governorship over the people, and governorship is a contract that must be concluded between two sides, either between the *Ummah* and the *Khalifah*, or between the *Amir* and the *Ummah* who appointed him, or between the *Khalifah* or *Amir* and who they appointed. Whoever undertakes the governing of the affairs without a contract of governorship, then his action is invalid, and every invalid action is forbidden (*Haram*) without any difference. Therefore, undertaking the governing of the affairs in a manner which is binding would be invalid, and from this understanding it is forbidden for political parties and individuals in the *Ummah* to have any relationship with any foreign state in which that relationship would include what would be considered as undertaking the governing of an issue from the issues

of the *Ummah* in a binding manner, and this is the evidence for this article.

Article 183

Ends do not justify means, because the method is integral to the thought. Thus, the obligation and the permitted cannot be attained by performing a forbidden action. Political means must not contradict the political methods.

Allah (swt) set rules in order to treat the problems of man, such as trade, renting, partnerships and so on, and set other rules in order to implement these treatments between the people, such as the discretionary (*Ta'zir*) punishment for the one who cheats in trade and cutting the hand of the thief as a prescribed punishment (*Hadd*). And in the same manner, He (swt) set rules to treat the problems that occur between the Islamic State and the disbelieving states, such as the rules regarding the one who is covered by a treaty and the one who takes amnesty, and the rules regarding the *Dar Al-Harb* and the rules regarding conveying the call to Islam to them in a way that attracts attention, and so on. And He (swt) set other rules in order to implement these rules, such as the protection of the blood and property of someone who has amnesty being equivalent to the blood and property of the Muslim, and the prohibition of fighting the disbeliever before they have been called to Islam in a manner which attracts attention, and so on. Therefore, the method in Islam is the *Shari'ah* rules, and so victory is not achieved through betrayal and conquest is not achieved through breaking a treaty. So in the same way that the goal must be defined by the *Shari'ah*, what is used to reach that goal must be from what the *Shari'ah* permitted, since the goal and the means are both part of the actions of the worshipper, and what makes the action

permitted or forbidden is the *Shari'ah* evidence, and not the results which are produced by it, nor the goal which is sought by it since Allah (swt) says:

﴿وَإِنْ أَحْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ﴾

“And judge, [O Muhammad], between them by what Allah has revealed.” (TMQ 5:49), not by what results the actions produce, or these actions are used to reach, and so the rule regarding the means is the *Shari'ah* evidence just like the rule regarding the goal. In other words, the fact that the *Shari'ah* evidence is what establishes the permissibility or impermissibility of the goal is evidence that the goal does not justify the means, in other words, does not make it permitted if there is *Shari'ah* evidence which has forbidden it. Accordingly the means are not permitted because its intended goal was permitted, or obligatory, or recommended, or because its goal had benefit or good or a victory; rather the means would be permitted if the *Shari'ah* permitted it and would be forbidden if the *Shari'ah* forbade it. In other words, it must be in accordance with the rules of the *Shari'ah*, because every action of the Muslim must be directed by the *Shari'ah*, and agree with the *Shari'ah* rule, because the definition of the *Shari'ah* rule is the address of the Legislator (swt) connected to the actions of the worshippers, and so it is obligatory that all the actions of the Muslim are in accordance with the *Shari'ah* rule.

Based upon this, the Muslims reject and disapprove of the principle that the ends justify the means. It is correct that Islam has principles deduced from its evidences that give the means used to reach the goal the rule of the goal, such as the principle: “*The means to something forbidden is also forbidden*”, and such as the principle: “*If one type of a permitted thing leads to a harm, only that one is prohibited, and the thing remains permitted*”, and the

principle: “*That, without which the obligation cannot be accomplished, is itself an obligation*”, however this is if the means is permitted or obligatory. If, on the other hand, the means are forbidden, then the goal does not make it permitted, whether it was obligatory or permitted; rather the means would remain forbidden. From this understanding, the goal does not justify the means, or in other words, the obligatory or permitted goal does not make the forbidden means permitted. The article was drafted in accordance with this.

Article 184

Political manoeuvres are necessary in foreign policy, and the effectiveness of these manoeuvres is dependent on concealing (your) aims and disclosing (your) acts.

This article is from the permitted issues left to the opinion and *Ijtihad* of the *Imam*, and the political manoeuvres are the actions which are undertaken by the State which are intended for goals other than the goals which are apparent from the action undertaken. The Prophet ﷺ used to carry out these manoeuvres, such as the expeditions which he carried out at the end of the first and beginning of the second year *Hijri*, as the apparent goal of these expeditions was that the Messenger ﷺ wanted to attack the Quraysh, but the reality behind them was to intimidate the Quraysh and make the other Arab tribes take a neutral position regarding the conflict between him ﷺ and the Quraysh. The evidence for that is that these expeditions were small in number - sixty, or two hundred, or three hundred - which is not large enough to fight the Quraysh, and he ﷺ did not fight the Quraysh in any of them. All that resulted from them was that he ﷺ concluded treaties with some of the Arab tribes, such as his alliance with Damra and concluding

friendly relations with Bani Mudlej. Another example is his ﷺ trip to Makkah in the sixth *Hijri* year intending to perform the pilgrimage, and his ﷺ announcing that while there was a state of war between him and the Quraysh under whose authority the Ka'bah was at that time. The intention of that journey was to arrive at an armistice treaty with the Quraysh in order to deal with Khaybar, since it had reached him ﷺ that Khaybar and the Quraysh were negotiating an agreement to attack Madinah. The evidence for this being a political manoeuvre is that he ﷺ was pleased to return without having completed the pilgrimage once he ﷺ had achieved the treaty, and he ﷺ then attacked and dealt with Khaybar two weeks after his ﷺ return. All of these are political manoeuvres. The power of these manoeuvres are the actions which are undertaken, such as that the manoeuvre is announced and apparent, but the goals of it are hidden, and so its effectiveness is dependent upon the prominence of the action and the concealment of the goals.

Article 185

Some of the most important political means are exposing the crimes of other states, demonstrating the danger of erroneous politics, exposing harmful conspiracies and undermining misleading personalities.

This article is part of the styles, and is part of the permitted issues, and the Messenger ﷺ used to expose the crimes of Bani Quraythah when they broke the treaty on the day of *Al-Ahzaab*, and when the Quraysh attacked him because 'Abd Allah Bin Jahsh (ra) took two men as prisoners and killed another during the sacred month and so they claimed that Muhammad ﷺ and his ﷺ companions had made the sacred month permitted (and so violated the custom), and spilt blood, seized wealth and captured men

during it. When the Quraysh attacked him with that, Allah (swt) revealed verses which exposed their false politics trying to turn the Muslims away from their religion. He (swt) said:

﴿يَسْأَلُونَكَ عَنِ الْشَّهْرِ الْحَرَامِ قِتَالٍ فِيهِ قُلْ قِتَالٌ فِيهِ كَبِيرٌ وَصَدُّ عَنِ سَبِيلِ اللَّهِ وَكُفُرٌ بِهِ وَالْمَسْجِدِ الْحَرَامِ وَإِخْرَاجُ أَهْلِهِ مِنْهُ أَكْبَرُ عِنْدَ اللَّهِ وَالْفِتْنَةُ أَكْبَرُ مِنَ الْقَتْلِ﴾

“They ask you about the sacred month - about fighting therein. Say, "Fighting therein is great [sin], but averting [people] from the way of Allah and disbelief in Him and [preventing access to] Al-Masjid Al-Haram and the expulsion of its people therefore are a greater [evil] in the sight of Allah. And Fitnah is greater than killing.”” (TMQ 2:217).

And when the Jews of Bani Quraythah conspired to kill the Messenger ﷺ by throwing a rock upon him ﷺ when he ﷺ was sitting next to a wall, the Messenger ﷺ exposed their conspiracy and their being exiled was punishment for it. Ibn Ishaq said:

«خَرَجَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِلَى بَنِي النَّضِيرِ يَسْتَعِينُهُمْ فِي دِيَةِ ذَيْنِكَ الْقُتَيْلَيْنِ مِنْ بَنِي عَامِرٍ الَّذِيْنَ قَتَلَ عَمْرُو بْنُ أُمَّةَ الضَّمْرِيِّ، لِلْحُجَّارِ الَّذِيْنَ كَانَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَقْدَ لَهُمَا، كَمَا حَدَثَنِي يَرِيدُ بْنُ رُومَانَ، وَكَانَ بَيْنَ بَنِي النَّضِيرِ وَبَيْنَ بَنِي عَامِرٍ عَقْدٌ وَحَلْفٌ. فَلَمَّا أَتَاهُمْ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَسْتَعِينُهُمْ فِي دِيَةِ ذَيْنِكَ الْقُتَيْلَيْنِ قَالُوا: نَعَمْ يَا أَبا الْفَاتِحِ، نُعِيْنُكَ عَلَى مَا أَحْبَبْتِ مِمَّا اسْتَعْنَتِ بِنَا عَلَيْهِ ثُمَّ خَلَ بَعْضُهُمْ بِعَضٍ فَقَالُوا: إِنَّكُمْ لَنْ تَجِدُوا الرَّجُلَ عَلَى مِثْلِ حَالِهِ هَذِهِ - وَرَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِلَى جَنْبِ جَدَارٍ مِنْ بَيْوَتِهِمْ قَاعِدٌ - فَمَنْ رَجُلٌ يَعْلُو عَلَى هَذَا الْبَيْتِ فَيُلْقِي عَلَيْهِ صَحْرَةً فَيُرِيْخُنَا مِنْهُ؟ فَأَنْتَدَبَ لِذَلِكَ عَمْرُو

بْنُ جَحَّاشِ بْنُ كَعْبٍ، فَقَالَ: أَنَا لِذلِكَ، فَصَعِدَ لِيُلْقِي عَلَيْهِ صَخْرَةً كَمَا قَالَ... فَاتَّى رَسُولُ اللَّهِ ﷺ الْخَبَرُ مِنَ السَّمَاءِ بِمَا أَرَادَ الْقَوْمُ فَقَامَ وَخَرَجَ رَاجِعًا إِلَى الْمَدِينَةِ... وَأَمَرَ رَسُولُ اللَّهِ ﷺ بِالتَّهْبِي لِحَرْبِهِمْ وَالسَّيْرِ إِلَيْهِمْ... ثُمَّ أَجْلَاهُمْ ﷺ»

“The Prophet ﷺ went out to Bani Nadir seeking their help pay the blood money for the two dead men of Bani ‘Amir who were killed by ‘Amru b. Umiyyah Al-Damri. They had a promise of protection from the Prophet ﷺ according to Yazid b. Ruman. Bani Nadir and Bani ‘Amir had a treaty and were allies. When Allah's Messenger ﷺ went to Bani Nadir asking them for help to pay the blood money for the two men, they said, ‘Yes, O Abu'l-Qasim! We will help you, since you asked us for help.’ Yet, when they met each other in secret, they said, ‘You will not find a better chance with this man than this- while the Messenger of Allah ﷺ was sitting next to a wall of one of their houses. They said: ‘who will ascend this wall and drop a stone on this man and rid us of his trouble’ ‘Amr b. Jahsh b. Ka'b volunteered and ascended the wall of the house to drop a stone on the Messenger ﷺ...The news of this plot was conveyed to the Prophet ﷺ from heaven, and he stood up and went back to Madinah. The Messenger of Allah ﷺ ordered the preparation of war and marched forth to them...then he exiled them”.

And the Quran attacked Abu Lahab by name:

﴿تَبَّأْ يَدَآلَيْ لَهَبٍ وَتَبَأْ﴾

“May the hands of Abu Lahab be ruined, and ruined is he.” (TMQ 111:1) and others by their characteristics, all of which is considered undermining harmful personalities.

These are the evidences for this article.

Article 186

One of the most important political methods is the manifestation of the greatness of the Islamic thoughts in governing the affairs of individuals, nations and states.

This article is part of what the Islamic State must undertake since it is obligatory and not simply permissible. That is because it is the duty of the State to carry the call to Islam in a manner which attracts attention, because Allah (swt) said:

﴿ وَمَا عَلَى الرَّسُولِ إِلَّا أَنْبَأَ الْمُؤْمِنِينَ ﴾

“And there is not upon the Messenger except [the duty of] clear notification.” (TMQ 24:54), and the word *Mubeen* is a description indicative of relation to the *Hukm (Wasf Mufhim)*, and consequently it is a restriction for the conveyance. Conveying the call to Islam in a manner which attracts attention cannot be achieved except through the manifestation of the greatness of the Islamic thoughts. Amongst the great Islamic thoughts are the way that the Islamic State deals with the *Dhimmi*, the one given amnesty, and the one who has a covenant, and the fact that the ruler is an implementer of the *Shari’ah* and not a dictator over them, and the fact that the *Ummah* accounts the ruler with complete discipline. So in the same manner that it is obligatory upon the *Ummah* to account the ruler, it is obligatory to obey him even if oppressed, and it is forbidden for it to obey him in a sin, and it has the full right to revolt against him, and it is obligatory to revolt if he showed clear disbelief. And the ruler and the ruled are equal in all affairs, and the *Ummah* can complain against him as they would against any other individual regarding any right in front of any judge, and they can complain about him to the judge of *Madhalim*.

if he contradicts the *Shari'ah* while ruling. And there are other Islamic thoughts of such nature, so accordingly it is obligatory to manifest them and accentuate their greatness until the greatness of Islam is displayed and until the call to Islam is conveyed in a manner which attracts attention. The manifestation of these thoughts is not from the political style rather they are from the political methods.

In addition to that, the *Shari'ah* rule is that practically fighting the disbelievers is not permitted until after the call to Islam has been conveyed to them: Al-Tabarani reported in *Al-Kabir* from Farwah b. Mosaik who said:

«أَتَيْتُ رَسُولَ اللَّهِ ﷺ، فَقُلْتُ: يَا رَسُولَ اللَّهِ أَفَاتَلُ بِمَنْ أَفْبَلَ مِنْ قَوْمِي مَنْ أَدْبَرَ مِنْهُمْ؟ قَالَ: «نَعَمْ»، فَلَمَّا أَدْبَرَ دَعَاهُ، فَقَالَ: اذْعُهُمْ إِلَى الْإِسْلَامِ فَإِنْ أَبَوُا فَقَاتِلُهُمْ»

“I said O Messenger of Allah ﷺ; Shall I fight with those (of my people) who accepted Islam the others who refused it? He said Yes. After I turned around he called me and said: Do not fight them until you have called them to Islam”. And Al-Tirmidhi reported something similar. And from Ibn ‘Abbas:

«مَا قَاتَلَ رَسُولُ اللَّهِ ﷺ قَوْمًا حَتَّى دَعَاهُمْ»

“The Messenger of Allah ﷺ did not fight any people until he called them” (reported by Al-Darimi, Ahmad and Al-Hakim). This is evidence for the obligation of the call to Islam before fighting. And for the call to Islam to be complete, it is imperative that the conveyance of the call to Islam to them be done in a way that attracts attention. From this, the issue of presenting the greatness of the Islamic thoughts is an obligation, because the conveyance in a manner which attracts attention is achieved

through it. Therefore, it is from the rules regarding the method, and not from the styles.

Article 187

The political cause of the *Ummah* is Islam, in the strength of the status of the State, the best implementation of its rules and continuity in carrying its call to mankind.

The meaning of the words *the political cause* is the matter that the State and the *Ummah* face and is a duty upon them to undertake whatever it necessitates from the governing of affairs. This issue could be general, and so it would be the political cause, or it could be specific in which case it would be a political cause, or it could be a part of a matter, and so in which case it would then be an issue from the various issues of the cause. For example, the issue that faces the Islamic *Ummah* and obliges her to undertake whatever it requires of the running of the affairs is the re-establishment of the *Khilafah*, so this would be the political cause, and anything else from the various causes such as the case of Palestine and the case of the Caucasus countries are issues of this cause, and though they are issues which the Islamic *Ummah* faces and they are affairs that need to be taken care of, however they are part of the return of the *Khilafah*. When the Islamic State is established, its political cause would be to implement Islam domestically and carry the call to Islam internationally, so if it becomes stabilised in a place then its political cause would be the one mentioned in this article. Subsequently if it implemented Islam correctly and its international profile was strengthened, then its political cause would become carrying the call to Islam to the world, until Allah (swt) made Islam dominant over all other ways of life.

Therefore, the political cause is what the State and *Ummah* face from the important political issues that the *Shari'ah* obligated upon them. So the State is obligated to work to establish it in accordance with what the *Shari'ah* required of it to do, and this does not require an evidence because it is part of the implementation of the rules of the *Shari'ah* upon the issues as they occur.

For this reason, the political cause changes as the issues that occur change. The political cause for the Messenger ﷺ while he was in Makkah in the stage of the call was to make Islam manifest, which is why when Abu Talib said to him: "**Your people have come to me and said such and such, whatever they had said to him, so spare me and yourself, and do not make me carry what I cannot bear**", the Messenger ﷺ thought that his uncle would forsake him and give him up, and his support for him was weakened, so he said to him:

«يَا عَمُّ، وَاللَّهُ لَوْ وَضَعُوا الشَّمْسَ فِي يَمِينِي وَالْقَمَرَ فِي يَسْارِي عَلَى أَنْ أَنْزِلَكَ هَذَا الْأَمْرَ
حَتَّى يُظْهِرَ اللَّهُ أَوْ أَهْلَكَ دُونَهُ مَا تَرْتُّبَ»

"**O Uncle, by Allah, if they place the sun in my right hand and the moon in my left hand in return for giving up this matter, I will never desist until either Allah makes it prevail or I perish defending it**" (*Sirah* of Ibn Hisham). These words indicate that the political cause for the Messenger ﷺ at that time was making Islam manifest. When he ﷺ was in Madinah, the State had been established and a number of battles occurred between him ﷺ and the main enemy, the head of disbelief which at that time was the Quraysh, the political cause of him ﷺ remained the manifestation of Islam. This is why on his ﷺ way to pilgrimage before reaching Hudaybiyah, after he heard that the Quraysh came to know that he was on the way and had come out in order to fight him, a man from

Bani Ka'ab said to him: “*They heard about your journey, and so they left wearing tiger skins, and they camped in Thi-Tuwa making oaths to Allah that you would never enter*”, and so the Messenger ﷺ said:

«يَا وَيْحَ قُرَيْشٍ! لَقَدْ أَكَلُوكُمُ الْحُرُبُ، مَاذَا عَلَيْهِمْ لَوْ خَلَوْا بَيْنِ وَبَيْنِ سَائِرِ النَّاسِ»
 إلى أن قال: «فَمَاذَا تَظُنُّ قُرَيْشًا؟ وَاللَّهُ، إِنِّي لَا أَرْأُ أُجَاهِدُهُمْ عَلَى الَّذِي بَعَثَنِي اللَّهُ لَهُ حَتَّى يُظْهِرَ اللَّهُ لَهُ أَوْ تَنْفَرِدَ هَذِهِ السَّائِلَةُ»

“*Woe upon Quraysh! War has destroyed them. What would it matter to them if they left me to deal with the rest of the Arabs*” until his ﷺ words: “*What does Quraysh think? By Allah, I will continue to fight them with what Allah sent me until Allah makes it prevail or until I die (Salifah is separate)*” (reported by Ahmad from Al-Maswar and Marwan). The *Salifah* is the surface of the neck, and the Messenger ﷺ used its separation as a metaphor for death; in other words: “until death”.

So the political cause in both situations was the same. However, in the first situation he ﷺ made clear his ﷺ insistence to continue conveying the call to Islam until Allah (swt) made it manifest, and in the second situation, in other words, at the time the State was established, he ﷺ made clear his ﷺ insistence upon *Jihad* until Allah (swt) made Islam manifest.

After the Prophet ﷺ arrived at an armistice treaty with the Quraysh, which was the great opening, since it was the preparation for the conquest of Makkah and made the Arabs come to the Messenger of Allah ﷺ embracing the religion of Islam in droves, at which point the political cause for the Messenger ﷺ was not simply making Islam manifest but rather it became making it manifest and dominant over all other ways of life through battles against the states following other ways of life, such as the Romans and

Persians. This is the reason why the Surah of *Al-Fateh* was revealed to him ﷺ, including the words of Allah (swt):

﴿ هُوَ الَّذِي أَرْسَلَ رَسُولَهُ بِالْهُدَىٰ وَدِينِ الْحَقِّ لِيُظَهِّرُهُ عَلَىٰ الْأَنْمَانِ كُلِّهَا ﴾

“It is He who sent His Messenger with guidance and the religion of truth to manifest it over all religion.” (TMQ 48:28). So accordingly, if the Islamic State implemented Islam well, and its international profile was strong, the political cause for it would become making Islam dominant over all other religions and preparation for defeating those who carry other ideologies and other religions.

This is what the article is based upon.

Article 188

The foreign policy revolves around carrying the call to Islam; and the relationship between the State and all of the other states is built upon this basis.

This article is taken from the letters that the Messenger ﷺ wrote to the kings, and the preparation of the army of Usamah to *Balqa* and *Al-Darum* in Palestine in order to fight the Romans, and his ﷺ insistence upon sending the Army despite his ﷺ illness which he ﷺ was to die from. This indicates that the call to Islam is the basis for the relationship between the Islamic State and any other state in the world, and this relationship necessitates the equipping of armies, and the preparation for fighting, such that if the opportunity to fight those who do not respond to the call to

Islam after it has been conveyed to them in a manner which attracts their attention, then the force required for *Jihad* is ready. Therefore, the call to Islam is the basis for every relationship with any state, so it is the basis for the foreign policy.

Article 189

The relationship of the State with other states present in the world is built upon four considerations. These are:

- 1. The existing states in the Islamic world are considered to be part of one land and therefore they are not included within the sphere of foreign affairs. Relations with these countries are not considered to be in the realm of foreign policy and it is obligatory to work to unify all these countries into one state.**
- 2. States who have economic, commercial, good neighbouring or cultural treaties with our State are to be treated according to the terms of the treaties. If a treaty states so, their subjects have the right to enter the State with an identity card without the need for a passport provided our subjects are treated in a like manner. The economic and commercial relations with such states must be restricted to specific items and characteristics which are deemed necessary and which at the same time do not lead to the strengthening of these states.**
- 3. States with whom we do not have treaties, and the actual imperialist states, such as Britain, America and France, and those states that have designs on the State, such as Russia, are legally considered to be belligerent states. All precautions must be taken towards them and it would**

be wrong to establish diplomatic relations with them. Their subjects may enter the Islamic State, but only with a passport and a visa specific to every individual and for every visit, unless they become practically belligerent.

4. **States that are actually belligerent states, such as Israel for example, a state of war must be taken as the basis for all dealings with them. They must be dealt with as if a real war existed between us – irrespective of whether an armistice exists between us or not - and all their subjects are prevented from entering the State.**

This article was derived from the rules regarding *Dar Al-Islam* and *Dar Al-Kufr*, and from the rules regarding the one with a covenant and the one who has amnesty.

The first clause is related to the Islamic lands which used to be ruled by Islam, such as India for example, or where the majority are Muslims such as in Lebanon. All of the Islamic lands since the destruction of the *Khilafah* in 1342 *Hijri* until it is re-established anew with the Permission of Allah (swt), are *Dar Al-Kufr*, because some of them are ruled by other than Islam and their external security is not the security of Islam. Others are secured by Muslims but are ruled by other than Islam. All of these are considered to be *Dar Al-Kufr* and since they used to be *Dar Al-Islam* it is imperative to work to revert them back to being *Dar Al-Islam*, but as long as they are ruled by other than Islam, or their security is other than the security of Islam, then they remain as *Dar Al-Kufr*, and so the rules of *Dar Al-Kufr* apply to them. It being *Dar Al-Kufr* does not mean that all its inhabitants are disbelievers, and it does not mean that in *Dar Al-Islam* that all its inhabitants are Muslims. Rather, the meaning of *Dar* (abode) here is a *Shari'ah* term: “*Shar'i reality*”, in

other words, it's the *Shari'ah* which gives it this meaning, like the terms *Salah* and *Siyam* and others from the *Shari'ah* terms.

Based upon it, the term *Dar Al-Islam* is applied to a country where the majority of its inhabitants are Christians for example, but it is part of the Islamic State. This is because the laws applied are the laws of Islam and the security of the land is by the Islamic security so long as it remains part of the Islamic State.

And in the same vein, with respect to the land where most of the people are Muslims but it is part of a State that does not rule by Islam, and its security is not upheld by the Muslim army but rather by the army of the disbelievers, the term *Dar Al-Kufr* would be applied to it despite the fact that most of its inhabitants were Muslim. So the meaning of the word *Dar* here is a *Shari'ah* reality and no regard is given to the proportion of Muslims when the term is used, rather the laws applied and the security of the people are considered. In other words, the meaning of *Dar* is taken from the *Shari'ah* texts which clarify this meaning, just like the meaning of the term *Salah* is taken from the *Shari'ah* texts which explained it. And similarly all *Shari'ah* terms take their meaning from the *Shari'ah* texts and not from the linguistic meaning of the term.

The rules regarding *Dar Al-Kufr* are completely different to the rules regarding *Dar Al-Islam*, so there are rules specific to it.

If the Muslim who lives in *Dar Al-Kufr* is unable to openly practise the rituals of his *Deen* there, then he has to move to another *Dar Al-Kufr* in which he would be able to do so due to His (swt) words:

﴿إِنَّ الَّذِينَ تَوَفَّهُمُ الْمَلَائِكَةُ طَالِبِيَ أَنفُسِهِمْ قَالُوا فِيمَ كُنْتُمْ قَالُوا كُنَّا
 مُسْتَضْعِفِينَ فِي الْأَرْضِ قَالُوا أَلَمْ تَكُنْ أَرْضُ اللَّهِ وَاسِعَةً فَتَهاجِرُوا فِيهَا فَأُولَئِكَ
 مَأْوَاهُمْ جَهَنَّمُ وَسَاءَتْ مَصِيرًا﴾

“Verily, as for those whom the angels take (in death) while they are wronging themselves they (the angels) said: “In what (condition) were you” they reply: “We were weak and oppressed on the Earth” They say: “Was not the earth of Allah spacious enough for you to emigrate therein”. Such men will find their abode in Hell – what an evil destination” (TMQ 4:97).

This is if there is no *Dar Al-Islam* as is the case today.

However, if there was a *Dar Al-Islam*, the rules related to emigration from *Dar Al-Kufr* to *Dar Al-Islam* are accordingly:

1. Whoever is capable of emigrating, and is unable to openly practise his *Deen* in his country nor carry out the Islamic rules required of him – then the emigration to *Dar Al-Islam* is obligatory upon him. In this circumstance it is not permitted for him to reside in *Dar Al-Harb*, in other words, *Dar Al-Kufr*. Rather the emigration to *Dar Al-Islam* is obligatory. The evidence is the verse mentioned:

﴿ إِنَّ الَّذِينَ تَوَفَّهُمُ الْمَلَائِكَةُ ظَالِمٍ أَنفُسِهِمْ قَاتَلُوا فِيمَا كُنُتُّمْ قَاتَلُوا
 كُنَّا مُسْتَضْعِفِينَ فِي الْأَرْضِ قَاتَلُوا أَلَّمْ تَكُنْ أَرْضُ اللَّهِ وَاسِعَةً فَمَا جَرُوا فِيهَا فَأُولَئِكَ
 مَا وَلَهُمْ جَهَنَّمُ وَسَاءَتْ مَصِيرًا ﴾

"Indeed, those whom the angels take [in death] while wronging themselves - [the angels] will say, "In what [condition] were you?" They will say, "We were oppressed in the land." The angels will say, "Was not the earth of Allah spacious [enough] for you to emigrate therein?" For those, their refuge is Hell - and evil it is as a destination." (TMQ 4:97) as it is also suitable for deduction here. Additionally, this is indicated by what Al-Tirmidhi reported from Jarir that the Messenger of Allah ﷺ said:

«أَنَا بَرِيءٌ مِّنْ كُلِّ مُسْلِمٍ يُقِيمُ بَيْنَ أَطْهَرِ الْمُشْرِكِينَ، قَالُوا: يَا رَسُولَ اللَّهِ، وَلِمَ؟
 قَالَ: لَا تَرَايَا نَارًا هُمْ»

"I am free from every Muslim that lives among the idolaters (Al-Mushrikeen)." They said: "O Messenger of Allah: How is that?" He said: "They should not see each other's campfires." meaning that if both of them lit their fires you could not distinguish between them, as an allegory to not live in their abode.

As for what Al-Bukhari reported:

«لَا هِجْرَةَ بَعْدَ فَنْحَ مَكَّةَ»

“There is no migration (Hijrah) after the conquest of Mecca” and his ﷺ words:

«لَا هِجْرَةَ بَعْدَ الْفَتحِ»

“There is no migration after Al-Fateh (conquest of Mecca)” and:

«قَدْ انْقَطَعَتِ الْهِجْرَةُ وَلَكِنْ جِهَادٌ وَّنِيَّةٌ»

“There is no emigration after the conquest (of Mecca) but only Jihad [(striving and fighting in the cause of Allah) will continue] and good intention.”, and what was reported that when Safwan b. Umayyah embraced Islam it was said to him: no Deen for the one who doesn’t emigrate, and so he came to Madinah and the Prophet ﷺ said to him:

«مَا جَاءَ إِلَيْكُمْ أَبَا وَهْبٍ؟ قَالَ: قِيلَ إِنَّهُ لَا دِينَ لِمَنْ لَمْ يُهَاجِرْ، قَالَ: ارْجِعْ أَبَا وَهْبٍ إِلَى أَبَاطِحِ مَكَّةَ، فَقَرُوْا عَلَى مَسْكِنِكُمْ فَقَدْ انْقَطَعَتِ الْهِجْرَةُ وَلَكِنْ جِهَادٌ وَّنِيَّةٌ، فَإِنْ اسْتُنْفِرُوكُمْ فَانْفِرُوا»

“What brought you here Abu Wahb? So he said: It is said there is no Deen for the one who does not emigrate. He ﷺ said: Abu Wahb – return to Mecca and stay in your places, there is migration but only Jihad and good intention, and when you are called to battle, then go forth.” (as reported by Ibn Asakir). All of this negates emigration after the conquest of Makkah, but this negation has the *Shari’ah Illah* (cause) derived from the narration itself, since his ﷺ words: “*after the conquest of Mecca*” comes in a form that includes the *Illah*, which means that the conquest of Makkah was the *Illah* behind negating the need to emigrate. Since the *Illah* is present and absent with the *Ma’lul* (caused), it is not specific to the conquest of Makkah rather it applies to the conquest

of any place, with the evidence of another report: “***there is no migration after Al-Fateh (conquest of Mecca)***”. This is supported by what Al-Bukhari reported from Aisha(ra) when she was asked about emigration; she replied:

«لَا هِجْرَةُ الْيَوْمِ، كَانَ الْمُؤْمِنُ يَقْرُبُ بِدِينِهِ إِلَى اللَّهِ وَرَسُولِهِ مَخَافَةً أَنْ يُفْتَنَ». فَأَمَّا
الْيَوْمَ فَقَدْ أَظْهَرَ اللَّهُ الْإِسْلَامَ، وَالْمُؤْمِنُ يَعْبُدُ رَبَّهُ حَيْثُ شَاءَ»

“*There is no migration today – the believer used to escape with his Deen to Allah and His Messenger, as he was afraid of facing the trials. As for today, Allah has made Islam prevail, and the believer can worship his Lord wherever he wishes*” which indicates that the emigration for the Muslim before the conquest was in order to escape with his *Deen* thus avoiding being afflicted, and this was negated after the conquest of Makkah since he then became capable of openly practising his *Deen* and establishing the laws of Islam. So the conquest upon which this was based is the ‘Illah for negating the need to emigrate, and not the conquest of Makkah as a specific incident. Accordingly, what is meant is that there is no emigration from a land once it has been conquered. And his ﷺ words to Safwan that emigration is finished meant emigration from Makkah after it had been conquered, since emigration is to leave the land of the disbelievers and from *Dar Al-Kufr*, so then if a land is conquered and becomes *Dar Al-Islam* then it does not remain as a land of disbelievers nor a *Dar Al-Kufr*, and so there is no *Hijrah* from it, and accordingly every land which is conquered does not have a *Hijrah* from it after its conquest (since it has become part of *Dar Al-Islam*). This is supported by what Ahmad reported from Mu’awiyah who said: I heard the Messenger of Allah ﷺ say:

«لَا تَنْقَطِعُ الْهِجْرَةُ مَا تُقْبِلَتِ التَّوْبَةُ، وَلَا تَرَأْسُ التَّوْبَةُ مَقْبُولَةً حَتَّى تَطْلُعَ
الشَّمْسُ مِنَ الْمَغْرِبِ»

*“Migration will not end until repentance ends, and
repentance will not end until the sun rises in the west.”* and
Ahmad also reported from the Prophet ﷺ that he ﷺ said:

«إِنَّ الْهِجْرَةَ لَا تَنْقَطِعُ مَا كَانَ الْجِهَادُ»

“Migration will not end so long as there will be Jihad.”
and in another narration:

«لَا تَنْقَطِعُ الْهِجْرَةُ مَا قُتِلَ الْعَلُوُّ»

“Migration will not end as long as the enemy is fought”,
which indicate that the emigration from *Dar Al-Kufr* to *Dar Al-Islam* continues and does not end.

2. The one who is capable to emigrate, but is able to openly practice his *Deen* in his country, and establish the *Shari'ah* laws required of him. In this case the emigration is recommended and not obligatory...the evidence being that the Messenger ﷺ used to encourage emigration from Makkah before its conquest while it remained *Dar Al-Kufr*, and explicit verses were revealed regarding it such as His (swt) words:

﴿إِنَّ الَّذِينَ ءامَنُوا وَالَّذِينَ هَاجَرُوا وَجَهَدُوا فِي سَبِيلِ اللَّهِ أُولَئِكَ يَرْجُونَ رَحْمَةَ اللَّهِ وَاللَّهُ غَفُورٌ رَّحِيمٌ﴾ [آل عمران ٢١٨] قوله سبحانه: ﴿الَّذِينَ

إِنَّمَا نُؤْمِنُ بِهِ مَنْ هُوَ أَنْجَانٌ
 وَهَاجَرُوا وَجَاهُدُوا فِي سَبِيلِ اللَّهِ بِأَمْوَالِهِمْ وَأَنفُسِهِمْ أَعْظَمُ دَرَجَةً عِنْدَ اللَّهِ
 وَأُولَئِكَ هُمُ الْفَائِزُونَ ﴿١٢﴾

“Indeed, those who have believed and those who have emigrated and fought in the cause of Allah - those expect the mercy of Allah. And Allah is Forgiving and Merciful.” (TMQ 2:218), and: **“The ones who have believed, emigrated and strove in the cause of Allah with their wealth and their lives are greater in rank in the sight of Allah. And it is those who are the attainers [of success].”** (TMQ 9:20), and this is all explicit in requesting emigration. As for it not being obligatory, this is because the Messenger ﷺ sanctioned Muslims who remained in Makkah. It is reported that when Nu’aim Al-Nahham wanted to emigrate, his tribe Banu Adi said to him: stay with us and remain upon your *Deen*, and we will prevent whoever wishes to harm you, and continue to support us as you have supported us; he used to help the orphans and widows. And so he delayed his emigration for a period and then emigrated later, and so the Prophet ﷺ said to him:

«قَوْمٌ كَانُوا خَيْرًا لَكَ مِنْ قَوْمٍ لِي، قَوْمٌ أَخْرَجُونِي وَأَرَادُوا قَتْلِي، وَقَوْمٌ كَفِطْلُوكَ وَمَنْعُوكَ»

“Your people were better to you than mine to me, my people expelled me and wanted to kill me, whereas yours took care of you and protected you” (mentioned by Ibn Hajar in *Al-Isabah*).

3. As for one who was not capable, then Allah (swt) is forgiving, and he is not requested to do so due to his inability to emigrate,

either due to sickness or being forced to stay, or due to weakness such as women, children and the like. The evidence is His (swt) words:

﴿إِلَّا الْمُسْتَضْعَفِينَ مِنَ الرِّجَالِ وَالنِّسَاءِ وَالْوِلْدَانِ لَا يَسْتَطِيعُونَ حِيلَةً
وَلَا يَهْتَدُونَ سَبِيلًا﴾

“Except for the oppressed among men, women and children who cannot devise a plan nor are they directed to a way.”
(TMQ 4:98).

4. As for one who is able to practise his *Deen* openly in his country, and implement the rules of the *Shari’ah* requested from him, and at the same time he possesses the capability to transform the *Dar Al-Kufr* he lives in into *Dar Al-Islam* – it is prohibited in such a situation for him to emigrate from *Dar Al-Kufr* to *Dar Al-Islam*, irrespective of whether he possessed the capability himself or by organising himself with the Muslims in his land, or through getting help from Muslims from outside of his land, or through co-operation with the Islamic State, or through any of the permitted means. It is obligatory upon him to work to change the *Dar Al-Kufr* into a *Dar Al-Islam*, and in such a situation it is prohibited for him to emigrate from there. The evidence for this is that the work to make his land join to *Dar Al-Islam* is obligatory, and so if he does not support it and he is capable to perform it and left behind the action of seeking it to join the *Dar Al-Islam* and instead emigrates, then he has committed a sin just like the neglect of any other obligation.

Based upon this, if there was a *Dar Al-Islam*, taking up permanent residence in *Dar Al-Kufr* is prohibited for the one who is obligated to emigrate. Above that, taking a permanent residence in *Dar Al-Kufr* makes that Muslim from the people of *Dar Al-Kufr*,

and so the rules which apply to *Dar Al-Kufr* apply to his relationship with the Islamic State and from the angle of his relationships with other individuals, and so the *Hudud* (prescribed punishments) are not applicable to him, and *Zakah* is not collected from him, and anyone from *Dar Al-Islam* cannot inherit from him, and it is not obligatory to get maintenance from anyone in *Dar Al-Islam* from those people who are obligated to pay for him if he had resided there, because the *Shari'ah* is not applied upon the people of *Dar Al-Kufr*. Accordingly, they are not obligated by what the Muslims are obligated by and nor do they have the rights that the Muslims have, so they are not encompassed by the rules. The evidence for that is that the Muslims request two issues from those in *Dar Al-Kufr*: firstly, Islam; secondly, to come under the authority of Islam. It is related on the authority of Sulayman b. Buraydah on that of his father who said:

«كَانَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَاٰتَهُ وَسَلَّمَ إِذَا أَمَرَ أَمِيرًا عَلَى جَيْشٍ أَوْ سَرِيَّةٍ أُوصِيهِ فِي خَاصَّيْهِ
بِتَقْوَى اللَّهِ وَمَنْ مَعَهُ مِنَ الْمُسْلِمِينَ حَيْرًا، ثُمَّ قَالَ: اغْزُوا بِاسْمِ اللَّهِ فِي سَبِيلِ اللَّهِ، قَاتِلُوا
مَنْ كَفَرَ بِاللَّهِ، اغْرُوا وَلَا تَعْلُوا وَلَا تَعْدِرُوا وَلَا تَمْثُلُوا وَلَا تَقْتُلُوا وَلِيَدَا، وَإِذَا لَقِيتُ عَدُوَّكُمْ
مِنَ الْمُشْرِكِينَ فَادْعُهُمْ إِلَى ثَلَاثَتِ خِصَالٍ أَوْ خَلَالٍ، فَإِنْ يَهْمِنُوكُمْ فَاقْبِلُوهُمْ وَكُفُّ
عَنْهُمْ، ثُمَّ ادْعُهُمْ إِلَى الإِسْلَامِ فَإِنْ أَجَابُوكُمْ فَاقْبِلُوهُمْ مِنْهُمْ وَكُفُّ عَنْهُمْ، ثُمَّ ادْعُهُمْ إِلَى
التَّحْوِلِ مِنْ دَارِهِمْ إِلَى دَارِ الْمُهَاجِرِينَ وَأَخْرِجُوهُمْ أَنَّهُمْ إِنْ فَعَلُوا ذَلِكَ فَلَهُمْ مَا لِلْمُهَاجِرِينَ
وَعَلَيْهِمْ مَا عَلَى الْمُهَاجِرِينَ، فَإِنْ أَبُوا أَنْ يَتَحَوَّلُوا مِنْهَا فَأَخْرِجُوهُمْ أَنَّهُمْ يَكُونُونَ كَاعِرَابًا
الْمُسْلِمِينَ يَجْرِي عَلَيْهِمْ حُكْمُ اللَّهِ الَّذِي يَجْرِي عَلَى الْمُسْلِمِينَ وَلَا يَكُونُ لَهُمْ فِي
الْغَنِيمَةِ وَالْفَيْءِ شَيْءٌ إِلَّا أَنْ يُجَاهِدُوا مَعَ الْمُسْلِمِينَ...»

“Whenever the Messenger of Allah ﷺ appointed anyone as leader of an army or detachment he would especially exhort

him to fear Allah and to be good to the Muslims who were with him. He would say: Fight in the name of Allah and in the way of Allah. Fight against those who disbelieve in Allah. Make a holy war, do not embezzle the spoils; do not break your pledge; and do not mutilate (the dead) bodies; do not kill the children. When you meet your enemies who are polytheists, invite them to three courses of action. If they respond to any one of these, you also accept it and withhold yourself from doing them any harm. Invite them to (accept) Islam; if they respond to you, accept it from them and desist from fighting against them. Then invite them to migrate from their lands to the land of Muhajireen and inform them that, if they do so, they shall have all the privileges and obligations of the Muhajireen. If they refuse to migrate, tell them that they will have the status of Bedouin Muslims and will be subjected to the Commands of Allah like other Muslims, but they will not get any share from the spoils of war or Fai' except when they actually fight with the Muslims (against the disbelievers)"

(reported by Muslim). So the Messenger ﷺ said:

«ثُمَّ اذْعُهُمْ إِلَى التَّحْوُلِ مِنْ دَارِهِمْ إِلَى دَارِ الْمُهَاجِرِينَ وَأَخْبِرْهُمْ أَنَّهُمْ إِنْ فَعَلُوا ذَلِكَ فَلَهُمْ مَا لِلْمُهَاجِرِينَ وَعَلَيْهِمْ مَا عَلَى الْمُهَاجِرِينَ»

"Then invite them to migrate from their lands to the land of Muhajireen and inform them that, if they do so, they shall have all the privileges and obligations of the Muhajireen." (reported by Muslim). This text makes emigration a precondition for them to have the same privileges and obligations as us, in other words, for them to be encompassed by the rules. The understanding of his ﷺ words:

«وَأَخْبِرْهُمْ أَنَّهُمْ إِنْ فَعَلُوا ذَلِكَ فَلَهُمْ»

“*if they do so, they shall have*” is that if they do not do that then they do not have the privileges of the *Muhajireen*, nor do their obligations apply to them, since achieving the result is connected to achievement of the condition, and so if the condition is not met the result is not achieved. So if they do not migrate then they do not have the privileges that the Muslims in *Dar Al-Islam* have. The words of the Messenger ﷺ:

«فَإِنْ هُمْ لَا يَعْرِفُونَ كَعَزَابِ الْمُسْلِمِينَ يَجْرِي عَلَيْهِمْ حُكْمُ اللَّهِ الَّذِي
يَجْرِي عَلَى الْمُسْلِمِينَ»

“*Tell them that they will have the status of Bedouin Muslims and will be subjected to the Commands of Allah like other Muslims*” means from the angle that they will not be killed, nor will their wealth be taken as war booty, and not from the angle of the rules applying to them, since the subject of the rules was explicitly explained by the condition mentioned just previously. The Messenger ﷺ explained the issue of wealth further, and mentioned in the same narration:

«وَلَا يَكُونُ لَهُمْ فِي الْغَيْمَةِ وَالْفَيْءِ شَيْءٌ»

“*but they will not get any share from the spoils of war or Fai'*”, and so the Messenger ﷺ considered that their refusal to migrate nullified their right to the war booty and spoils of war, and any other wealth is also encompassed through analogy with the war booty and spoils of war. In other words, they have no rights with regard to anything connected to wealth, and so the one who did not migrate to the abode of the *Muhajireen* is just like the non-Muslims with regards to these financial rights. Therefore, he does not have the privileges of the Muslims and nor do the obligations upon them apply to him, which means that the financial rules do not apply to him since he did not migrate to the abode of the *Muhajireen*. This

was an emphasis on financial rights, although all of the rules do not apply to him due to the words of the Messenger ﷺ:

«إِنْ فَعَلُوا ذَلِكَ فَلَأَنْهُمْ مَا لِلْمُهَاجِرِينَ وَعَلَيْهِمْ مَا عَلَى الْمُهَاجِرِينَ»

“if they do so, they shall have all the privileges and obligations of the Muhajireen”. It is the case that the abode of the *Muhajireen* (which was Madinah at that time) alone was *Dar Al-Islam*, and anything else was *Dar Al-Harb*, in other words, *Dar Al-Kufr*, which is why when the Messenger ﷺ used to go out on expeditions against every land other than the abode of the *Muhajireen* considering it to be *Dar Al-Harb*, according to the evidence related from Anas who said:

«كَانَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِذَا غَرَّ قَوْمًا لَمْ يُغْرِرْ حَتَّىٰ يُصْبِحَ، فَإِنْ سَمِعَ أَذَانًا
أَمْسَكَ، وَإِنْ لَمْ يَسْمَعْ أَذَانًا أَغَارَ بَعْدَ مَا يُصْبِحُ»

“Whenever the Messenger of Allah (saw) wanted to attack a people, he would wait until dawn, if he heard the Adhan (call to prayer) he would refrain, and if he did not hear it, he would pray and then attack” (reported by Al-Bukhari). And on the authority of Isam Al-Muzani who said: *“Whenever the Messenger of Allah (saw) dispatched a task force or an expedition, he used to say to them:*

«إِذَا رَأَيْتُمْ مَسْجِدًا أَوْ سَمِعْتُمْ مُنَادِيًّا فَلَا تَقْتُلُوا أَحَدًا»

“If you see a mosque, or if you hear a Mu’adhin, do not kill anyone” (reported by the five except for Ibn Maja, and Al-Tirmidhi said it is *Hasan Gharib*). These two narrations indicate that the Messenger ﷺ considered anything other than the abode of the *Muhajireen* to be *Dar Al-Kufr* and did not differentiate between Muslims and non-Muslims other than that the Muslims are not

fought, not killed and their wealth is not taken as booty, whereas the non-Muslims are fought, they can be killed and their wealth can be taken as booty, while in everything else the rule is the same. So every land which is not *Dar Al-Islam* is considered to be *Dar Al-Harb*, and takes the rules of *Dar Al-Harb*.

This all indicates that the rule is related to the abode, and so whoever takes residency in *Dar Al-Harb*, in other words, *Dar Al-Kufr*, while there was *Dar Al-Islam*, then the rules of *Dar Al-Harb* apply to him whether he was a Muslim or a disbeliever, and they are the same in that respect, except that when the land is opened by force then the Muslim is not killed nor is his wealth taken as booty. In the same manner, the rules regarding *Dar Al-Islam* apply to the one who is resident in *Dar Al-Islam*, and the Muslims and the *Dhimmi* are equal in this respect. This means that differences in rules result from differences in the abode. Accordingly, whoever resides in *Dar Al-Kufr* whether Muslim or non-Muslim is not encompassed by the laws of Islam at all, due to the words of the Messenger ﷺ in the narration of Sulayman b. Buraydah:

«أَنَّهُمْ إِنْ فَعَلُوا ذَلِكَ فَلَهُمْ مَا لِلْمُهَاجِرِينَ وَعَلَيْهِمْ مَا عَلَى الْمُهَاجِرِينَ»

“if they do so, they shall have all the privileges and obligations of the Muhajireen”, since its understanding is that if they did not do that, in other words, if they did not migrate to the abode of the *Muhajireen*, then they would not have their privileges and nor would their obligations apply to them; in other words, they are not encompassed by the laws of Islam which are applied in the Islamic State (*Dar Al-Islam*) since they do not carry its citizenship, except for two rules which are: the inviolability of their blood and what wealth they have at the time of the conquest of *Dar Al-Kufr* in which they lived, and this is due to words of the Messenger ﷺ from ‘Abd Allah Bin Umar who said: The Messenger of Allah ﷺ said:

«أُمِرْتُ أَنْ أُقَاتِلَ النَّاسَ حَتَّىٰ يَشْهُدُوا أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّ مُحَمَّدًا رَسُولُ اللَّهِ
 وَيُقِيمُوا الصَّلَاةَ وَيُؤْتُوا الزَّكَاةَ، فَإِذَا فَعَلُوا عَصَمُوا مِنِّي دِمَاءَهُمْ وَأَمْوَالَهُمْ إِلَّا بِحَقِّهَا
 وَحِسَابُهُمْ عَلَى اللَّهِ»

“I have been commanded to fight against people till they testify that there is no god but Allah, that Muhammad is the Messenger of Allah, and they establish prayer, and pay Zakah and if they do it, their blood and property are guaranteed protection on my behalf except when justified by law, and their affairs rest with Allah.” (agreed upon from the narration of Umar, Abu Hurayrah, Ibn Umar and others, with the wording from Muslim). As for the one who permanently resides in *Dar Al-Islam*, whether they were Muslim or *Dhimmī*, they are covered by all the rules of Islam which the State implements in *Dar Al-Islam* other than what the *Shari’ah* exempts the non-Muslims from such as their worship.

This consideration of the abode from the angle of it being *Dar Al-Kufr* or *Dar Al-Islam* is what is referred to as citizenship. Whoever resides in *Dar Al-Islam*, whether Muslim or non-Muslim, carries the Islamic citizenship (citizenship of *Dar Al-Islam*), and so the rules of Islam are applied upon him by the State, and whoever resides in *Dar Al-Kufr*, whether a Muslim or disbeliever, carries the citizenship of *Dar Al-Kufr*, and so the rules of Islam are not applied upon him by the State. Accordingly, the consideration is given to the permanent residency and not to temporary stay, and so if a Muslim resides in *Dar Al-Islam* and goes to *Dar Al-Kufr* for the sake of commerce, treatment, seeking knowledge, visiting relatives, to take a vacation, or any other purpose, and resides there for months or years but he carries the Islamic citizenship, in other words, his permanent residency that he is going to return to was in *Dar Al-Islam*, then he is considered from the people of *Dar Al-*

Islam, even if he was living in *Dar Al-Kufr*. And if a Muslim was a resident in *Dar Al-Kufr*, and came to *Dar Al-Islam* for commerce, treatment, to seek knowledge, visit their relatives, to take a vacation, or any other purpose, and so stayed in *Dar Al-Islam* for a day, month, year, or more, but he carries the citizenship of *Kufr*, in other words, his permanent residency that he is going to return to is in *Dar Al-Kufr* then he is considered to be from the people of *Dar Al-Kufr*, and so the rules of the one given amnesty apply to him, and so he cannot enter *Dar Al-Islam* except with security, in other words, except with the permission of the State. Therefore, the subject is not temporary residency, however long that residency may be, but rather the subject is permanent residency, or in other words, carrying the citizenship.

Based upon this, if the Islamic State was established then the *Khilafah* would be present, the lands that it governs with the authority of the Muslims, and the security of Islam, then they would become *Dar Al-Islam*, and anything else would have to be examined: if they were not ruled by Islam or the security was the security of *Kufr*, then it would be *Dar Al-Kufr* or in other words, *Dar Al-Harb* even if all of the inhabitants were Muslims, and the rules of *Dar Al-Harb* would apply to it. However, if it was ruled by Islam, and the security was the security of Islam, but it had not joined to the *Khilafah*, then it would be *Dar Al-Islam* and the rules of Islam would apply to it, and the rule regarding it would be like the rule of the rebels, their contracts would be considered valid and their appointment as judges and governors would be valid, and the rule of their judgements and governorships is considered valid, but they are fought in order to make them give allegiance to the *Khalifah* due to the narration:

«إِذَا ثُبِّعَ لِخَلِيفَتِينِ فَاقْتُلُوا الْآخَرَ مِنْهُمَا»

“When oath of allegiance has been taken for two Imams (Khulafaa’), kill the one for whom the oath was taken later.” (reported by Muslim from Abu Said); in other words, fight against him. Based upon this, if the Islamic State was established on any part of the Muslim lands such as Iraq, Turkey and Syria for example, then the rule of the Muslim who resides in England, America, Russia or anywhere else from the various abodes of *Kufr* and lands of the disbelievers would be the rule of the one who was in *Dar Al-Harb*, with no difference between the Muslim and disbeliever except for the inviolability of their blood and wealth upon the conquest of that land. As for the Muslims who are in the Muslim lands, then if they implemented Islam and did not become part of the *Khilafah*, then their lands are *Dar Al-Islam* and they would take the rule of rebels (*Bugha*). If they did not implement Islam then they would be *Dar Al-Kufr*. In the same way, every land from the lands of Islam which remained not implementing Islam, or whose external security was not the security of Islam, is considered to be *Dar Al-Kufr*, and the rule of *Dar Al-Harb* is applied to it, even if all the people there were Muslims. There is no difference whether it was neighbouring the Islamic State, which is the lands which the *Khalifah* of the Muslims ruled or were not adjacent to it. So the Islamic State will consider all the Islamic lands which were ruled by Islam, or which the majority of people there are Muslims, as a single Islamic land which must join the Islamic State, and be subservient to the Islamic flag, and for there to be a pledge to the *Khalifah* upon its neck.

The phrase the *security of Islam* means to be protected by the authority of Islam, and the phrase *security of Kufr* means to be protected by the authority of disbelief; it is mentioned in the *Al-Muhit* dictionary: “Safety and security like a companion against fear”, and Abu Dawud related from Sa’ad who said:

«لَمَّا كَانَ يَوْمُ فَتْحِ مَكَّةَ أَمَّنَ رَسُولُ اللَّهِ ﷺ النَّاسَ إِلَّا أَرْبَعَةَ نَفَرٍ وَأَمْرَاتَيْنِ وَسَمَّاهُمْ» وَعَنْ أَبِي بْنِ كَعْبٍ «فَلَمَّا كَانَ يَوْمُ الْفَتْحِ قَالَ رَجُلٌ لَا يُعْرَفُ: لَا فَرِئِشَ بَعْدَ الْيَوْمِ، فَنَادَى مُنَادِي رَسُولِ اللَّهِ ﷺ أَمِنَ الْأَسْوَدُ وَالْأَبْيَضُ إِلَّا فُلَانًا وَفُلَانًا نَاسًا سَمَّاهُمْ»

“When it was the day of the conquest of Makkah, the Messenger of Allah ﷺ gave security to the people, except for four men and two women who he named”, and from Ubay b. Ka’ab: “when it was the day of conquest a man who is not known said: (There will be) no Quraysh after today, so the announcer of the Messenger of Allah ﷺ said that the black and the white have been given safety, except so and so, people who he named” (reported by Ahmad in *Al-Musnad* with a *Hasan* chain, and Al-Hakim reported something similar in *Al-Mustadrak* as well as Ibn Hibban in his *Sahih*, both from Ubay b. Ka’ab). So this is the meaning of security. It being added to Islam or *Kufr*, is simply to connect it to the authority which is providing the security, because the security in the State is achieved by the authority. Therefore, the security of Islam is the security by the authority of the Muslims and the security of *Kufr* is the security by the authority of *Kufr*.

Domestic security is to secure the blood, wealth and honour of every one of the subjects by the security of the authority; whereas the external security is that the State’s borders are protected by its authority from invasion against it, and not by any other authority.

As for the second clause in the article, its evidence is that Islam permitted entering into treaties with other nations; Allah (swt) said:

﴿إِلَّا الَّذِينَ يَصْلُوْنَ إِلَى قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِّيقَّٰنٌ﴾ [النساء ٩٠] وقال:
 ﴿وَإِنْ كَانَ مِنْ قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِّيقَّٰنٌ فَدِيَّةٌ مُّسْلَمَةٌ إِلَى أَهْلِهِمْ﴾
 [النساء ٩٢] وقال: ﴿وَإِنْ آتَنَصَارُوكُمْ فِي الَّذِينَ فَعَلَيْكُمُ الظَّرُورُ إِلَّا عَلَى قَوْمٍ
 بَيْنَكُمْ وَبَيْنَهُمْ مِّيقَّٰنٌ﴾

“Except for those who take refuge with a people between yourselves and whom is a treaty.” (TMQ 4:90), and He (swt) said: “And if he was from a people with whom you have a treaty - then a compensation payment presented to his family.” (TMQ 4:92), and He (swt) said: “And if they seek help of you for the religion, then you must help, except against a people between yourselves and whom is a treaty.” (TMQ 8:72). The Messenger ﷺ concluded a treaty with Yuhannatu Bin Ruba, the companion of Ayla, and concluded a treaty with Bani Damrah. There were conditions in these treaties which were applied, and it is a duty upon the Muslims to be bound by these conditions due to the words of the Prophet ﷺ:

«وَالْمُسْلِمُونَ عَلَى شُرُوطِهِمْ»

“*The Muslims will be held to their conditions*” (reported by Al-Tirmidhi who said it was *Hasan*), as long as this condition does not contradict Islam. If the condition did contradict Islam it would be rejected due to the words of the Messenger ﷺ in the narration of Al-Tirmidhi:

«إِلَّا شَرْطًا حَرَمَ حَلَالًا أَوْ أَحْلَ حَرَامًا»

“*except for a condition that makes the lawful to be unlawful or the unlawful to be lawful*” and his ﷺ words:

«مَا كَانَ مِنْ شَرْطٍ لَّيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ»

“And any condition that is not found in the Book of Allah is invalid” (agreed upon from Aisha(ra)). Therefore, the Muslims carry out the implementation of these conditions according to what was mentioned in the texts of the treaties as long as they do not contradict Islam. So the evidence for this clause is the evidence that permits treaties and the evidence for the obligation of fulfilling the conditions.

As for the second half of this clause connected to the economic and commercial relations, this is in consideration of what harm upon the *Ummah* could result from the economic agreements, such as if the raw materials were exported out of the country, or resulted in the closure of factories in the country, or anything else similar, so, therefore, the agreements are restricted to whatever does not cause harm and anything which causes harm is prohibited through the application of the principle: “*If one type of a permitted thing leads to a harm, only that one is prohibited, and the thing remains permitted*”, and the same applies to the circumstances of the commercial agreements.

These States are legally considered to be belligerent States, because they are disbelievers who do not submit to Islamic authority, so they are considered to be belligerents because the Messenger ﷺ said:

«أُمِرْتُ أَنْ أُقَاتِلَ النَّاسَ حَتَّى يَشْهُدُوا أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّ مُحَمَّدًا رَسُولُ اللَّهِ»

“I have been commanded (by Allah) to fight people until they testify that there is no true god except Allah, and that Muhammad is the Messenger of Allah”, which is general. Their being legally considered as belligerents, in other words, with respect to the laws, is due to the agreements between us and them.

As for the third clause, its evidence is the evidence for the rules of *Dar Al-Harb* in the absence of any treaty between us and them. The evidence to not create any diplomatic relations with the countries which are mentioned in the article is the fact that if their having embassies in a land which was under the authority of Islam would lead to harm because the job of embassies of countries like these is to try to increase the influence of their States in the countries where they had their embassies, so consequently they are prohibited in accordance with the practical application of the principle of prohibiting something permitted if it leads to harm. However, their subjects are not prevented from entering the country unless their entrance would lead to harm. And a visiting envoy would not be prohibited from entering the country unless the entrance of the specific person sent as an envoy, not their envoys generally, would lead to harm.

These countries are legally considered as belligerent (rather than actual belligerent) due to their falling under his ﷺ words:

«أَمْرُتُ أَنْ أَقْاتِلَ النَّاسَ حَتَّىٰ يَشْهُدُوا أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّ مُحَمَّدًا رَسُولُ اللَّهِ»

“I have been commanded (by Allah) to fight people until they testify that there is no true god except Allah, and that Muhammad is the Messenger of”, from the angle that they are disbelievers. As for their being considered as belligerents from a legal rather than actual perspective, this is because there is no fighting between us and them, and there has been no announcement of an actual war between us from our side or theirs. If some or part of these countries come to be in a situation of actual war with us, in other words, if they attacked the Muslim lands, then they would be treated according to the fourth clause of this article which deals with actual war, and for that reason America and Britain are considered as actual belligerents after they began their war upon Iraq and Afghanistan, and any other country which declared war on

any of the Muslim lands would also be considered the same, and the rules to do with actual war are applied as long as the situation of war remains between us and them.

As for the fourth clause, its evidence is the evidence of *Jihad* from the issue of fighting the disbelievers, and the evidences that make the blood and property of the non-Muslims from amongst them permitted, and the evidences of fighting in the battle; Allah (swt) said:

﴿قَاتِلُوا الَّذِينَ يُلْوِنُكُم مِّنَ الْكُفَّارِ﴾

“O you who have believed, fight those adjacent to you of the disbelievers.” (TMQ 9:123), and the Prophet ﷺ said:

«أُمِرْتُ أَنْ أُقَاتِلَ النَّاسَ حَتَّىٰ يَشْهَدُوا أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّ مُحَمَّدًا رَسُولُ اللَّهِ»

“I have been commanded (by Allah) to fight people until they testify that there is no true god except Allah, and that Muhammad is the Messenger of Allah” agreed upon with the wording from Muslim, and he ﷺ made an exception for the Muslims amongst them with his words ﷺ:

«فَإِذَا فَعَلُوا عَصَمُوا مِنِي دِمَاءُهُمْ وَأَمْوَالُهُمْ إِلَّا بِحَقِّهَا»

“If they said so their blood and riches are guaranteed protection on my behalf except where it is justified by law”. And Allah (swt) said:

﴿وَمَنْ يُوَلِّهُمْ يَوْمَئِذٍ دُبُرَهُ إِلَّا مُتَحَرِّفًا لِّقِتَالٍ أَوْ مُتَحَيِّزًا إِلَىٰ فِئَةٍ فَقَدْ بَآءَ بِغَضَبِي مِنْ أَنِّي﴾

“And whoever turns his back to them on such a day, unless swerving [as a strategy] for war or joining [another] company, has certainly returned with anger [upon him] from Allah.” (TMQ 8:16), and also due to the words of the Messenger ﷺ:

«اجتَبُوا السَّبْعَ الْمُؤِيَّقَاتِ»

“*Avoid the seven destructive things*”, and he ﷺ enumerated them until he ﷺ said:

«وَالْئَوْلَىٰ يَوْمَ الزَّحْفِ»

“*fleeing from the battlefield*” (agreed upon from the narration of Abu Hurayrah).

And other rules of fighting and battles and the rest of the evidences regarding *Dar Al-Harb* and the battles.

It is not permitted to have a permanent peace treaty with these countries that were practically belligerent, in other words, a permanent cessation of fighting, or permanent truce, since this prevents *Jihad* which continues until the day of Judgement, just as a permanent truce prevents the spread of Islam until Allah (swt) makes it dominant over all other *Deens*. Allah (swt) says:

﴿وَقَاتِلُوهُمْ حَتَّىٰ لَا تَكُونَ فِتْنَةٌ وَيَكُونَ الَّذِينَ كُلُّهُمْ لَهُمْ﴾

“*And fight them until there is no fitnah and [until] the religion, all of it, is for Allah.*” (TMQ 8:39), and the Messenger ﷺ said:

«وَالْجِهَادُ ماضٍ مُنْدُ بَعْشَيِ اللَّهُ إِلَى أَنْ يُقَاتِلَ آخِرُ أُمَّتِي الدَّجَالَ»

“And jihad will be performed continuously since the day Allah sent me as a Prophet until the day the last member of my community will fight with the Dajjal (Antichrist).” (reported by Abu Dawud from Anas).

As for a temporary treaty with these countries, and a temporary cessation of the war, it is looked at as follows:

a. If the State which is in the actual war against us, has land which is not Islamic land upon which its entity is formed, then it is permitted to have a temporary truce with it, in other words, to stop the war with it for a temporary time, if the pause is in the interest of Islam and the Muslims, and according to the conditions that the *Shari’ah* confirmed.

The evidence for this is the treaty of Al-Hudaybiyah, which was between the Islamic State which the Messenger ﷺ had established in Madinah and the Qurayshi state which was established upon the land which Islam had not yet conquered, in other words, it was not established upon Islamic land.

b. If the State which was at war with us, was established as an entity in its entirety upon Islamic land, in other words, the entity did not have any land connected to it which had not been conquered by the Muslims, such as Israel – the Jewish State which has stolen Palestine – then it is not permitted to have a treaty with it, since the establishment of this State was invalid according to the *Shari’ah*, and since a treaty with it would mean to give up Islamic land to it, which is prohibited and a crime against Islam. Rather, the situation of actual war has to remain with it, irrespective if there was a truce which was contracted with it by illegitimate rulers in the Muslim lands, or not.

And so accordingly any treaty with the Jewish State, even over a handspan of the land, is prohibited by the *Shari’ah* because

it is usurping and occupying and its whole entity is established on Muslim land and it is a surrender of Islamic land to it, and establishing its control over the Muslims there, which is not permitted according to the *Shari'ah*. Islam requires that all of the Muslims fight against it, and so their armies must be sent to fight, and all those capable of fighting be gathered as soldiers in the army, and for this to continue until the Jewish State is finished and the Muslim lands are rescued from it. Allah(swt) says:

﴿وَلَنْ يَجِدُ اللَّهُ لِلْكُفَّارِ عَلَى الْأُمَمِ بَيْلَةً﴾

“And never will Allah give the disbelievers over the believers a way [to overcome them].” (TMQ 4:141) and His (swt) words:

﴿فَمَنْ أَعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا أَعْتَدَى عَلَيْكُمْ﴾
[البقرة ١٩٤]، وقال تعالى: ﴿وَأَخْرِجُوهُمْ مِنْ حَيْثُ أَخْرَجُوكُمْ﴾

“So whoever has assaulted you, then assault him in the same way that he has assaulted you.” (TMQ 2:194) and: **“And expel them from wherever they have expelled you.”** (TMQ 2:191).

Article 190

All military treaties and pacts (with other States) are completely prohibited, along with anything of their type, or connected to them such as political treaties and agreements covering the leasing of military bases and airfields. It is permitted to conclude good neighbour relations, economic, commercial, financial, cultural and armistice treaties.

The definition of: “*treaties*” is that they are agreements that States conclude between themselves with the goal of organising a specific relationship and defining the rules and conditions which that relationship submits to. The Islamic jurists used the term: “*Al-Muwada’at*”, and the evidence for the permissibility of concluding treaties between the Muslims and disbelievers are the words of Allah (swt):

﴿إِلَّا الَّذِينَ يَصِلُونَ إِلَى قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مَيْتَانٌ﴾ [النساء ٩٠] وقوله:
 ﴿وَإِنْ كَانَ مِنْ قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مَيْتَانٌ فَدِيَةٌ مُسَلَّمَةٌ إِلَى أَهْلِهِ﴾
 [النساء ٩٢] وقوله: ﴿وَإِنْ أَسْتَأْنْصَرُوكُمْ فِي الَّذِينَ فَعَلَيْكُمُ الْنَّصْرُ إِلَّا عَلَى قَوْمٍ
 بَيْنَكُمْ وَبَيْنَهُمْ مَيْتَانٌ﴾

“**Except for those who take refuge with a people between yourselves and whom is a treaty.**” (TMQ 4:90) and: “**And if he was from a people with whom you have a treaty - then a compensation payment presented to his family.**” (TMQ 4:92), and: “**And if they seek help of you for the religion, then you must help, except against a people between yourselves and whom is a treaty.**” (TMQ 8:72), and the word *Al-Mithaq* used in the verses means treaties. The Messenger ﷺ concluded several treaties with the disbelievers, however it is a precondition for the validity of the contracting of the treaty that the subject that the contract was upon was something that the *Shari’ah* had permitted. There are various types of treaties, such as non-political and political treaties.

Non-political treaties are the agreements which specify the manner of the relationship between the two States with respect to a

particular issue between the two of them such as financial, economic, commercial, industrial and cultural relationships, and anything else similar, and so these are considered in the light of the *Shari'ah* according to their subject, and the *Shari'ah* rules connected to that subject are applicable. That is why economic treaties are permitted, since the rules regarding renting and international commerce are applicable, and commercial treaties are also permitted, since the rules regarding selling and international commerce are applicable, and financial treaties are permitted, since the rules of exchange apply, and cultural treaties are permitted since the rules regarding education and teaching apply from the angle of scientific material, and from the angle of definite and speculative results which are produced by learning and teaching them.

There are three categories of political treaties:

Firstly, those that are permitted, which are those that do not affect the nature of the State, and do not decrease its domestic and international authority, and do not give the disbeliever any authority over it, such as peace and armistice treaties - the Messenger ﷺ concluded an armistice treaty with the Quraysh in the armistice treaty of Hudaybiyah.

Also permitted are treaties to not commit acts of aggression against one another; the Messenger ﷺ concluded treaties to not commit acts of aggression with Bani Damra and Bani Mudlij. In the same manner, treaties upon friendly relations are permitted since the Messenger ﷺ concluded a treaty upon friendly relations with the Jews and so on.

The second category of treaties are those which are necessary for the State if it is in a position of difficulty and constraint, and these are permitted, such as a treaty to take *Jizya*

from a State while it remains ruled by a *Kufr* system, or a treaty with a State giving it money in exchange for its neutrality with us.

The third category are those treaties which are prohibited, such as treaties of protection, or permanent neutrality and treaties which delineate permanent borders, and those for leasing airfields and military bases and anything else similar. These treaties are not permitted, because the subject of the treaty is not permitted, since protection gives the disbeliever authority over the Muslims, and makes the security of the Muslims the security of disbelief (*Kufr*). Permanent neutrality is not permitted, because it reduces the authority of the Muslims. Delineating permanent borders is not permitted because it means not carrying the call to Islam and the suspension of the rules of *Jihad*. Leasing airfields is not permitted because it gives the disbelievers authority over *Dar Al-Islam* and the same applies to military bases.

As for military treaties, they are forbidden due to the words of the Prophet ﷺ:

«لَا تَسْتَضِيُّوْا بِنَارِ الْمُشْرِكِينَ»

“Do not take light from the fire of the polytheists (the *Mushrikin*)” (reported by Ahmad and Al-Nasa’i), and the fire of a people is a metaphor for their structure in war. It is also forbidden due to his ﷺ words :

«فَلَنْ أَسْتَعِنْ بِمُشْرِكٍ»

“I do not seek help from a polytheist (*Mushrik*)” (reported by Muslim from Aisha(ra)). And from Aisha(ra) in Abu Dawud and Ibn Maja:

«إِنَّمَا لَا نَسْتَعِنُ بِمُشْرِكٍ»

“We do not want any help from a polytheist (Mushrik)” and his ﷺ words:

«لَا نَسْتَعِينُ بِالْكُفَّارِ عَلَى الْمُشْرِكِينَ»

“We do not seek help from the disbelievers against the polytheists” (reported by Ibn Abi Shayba from Sa’id b. Al-Mundhir).

With regard to what is reported by Ahmad and Abu Dawud from Dhi Makhmar who said: I heard the Messenger of Allah ﷺ say:

«تُصَلِّحُونَ الرُّومَ صُلْحًا آمِنًا، وَتَغْزِيُونَ أَنْثُمْ وَهُمْ عَدُوًّا مِنْ وَرَائِهِمْ»

“You will make a secure peace with the Byzantines, then you and they will fight an enemy behind them.” – his ﷺ words:

«تَغْزِيُونَ أَنْثُمْ وَهُمْ عَدُوًّا مِنْ وَرَائِهِمْ»

“and you and they will fight an enemy behind them” is taken to mean individual Romans, and not their State, and that is because he ﷺ said:

«تُصَلِّحُونَ الرُّومَ صُلْحًا آمِنًا، وَتَغْزِيُونَ

“You will make a secure peace with the Byzantines, and you will fight” and the treaty between the Muslims and disbelievers is only when they accept the *Jizya* and to enter under the rule of the Muslims, since Islam ordered the Muslims to give the disbelievers they fight the choice between three: Islam, *Jizya* or war. If the treaty occurred and they were disbelievers, this could not happen except in the situation they were paying *Jizya* and their falling under the Islamic flag. So, therefore, his ﷺ words: “**you will make a treaty**” is an indication that they were under the flag of the

Muslims, and so they would be individuals at that time, and this is supported by what happened with the Romans. The Muslims fought and defeated them, and occupied their lands, and the Romans fought with the Muslims as individuals, but the Roman State did not fight alongside the Islamic State against another enemy behind them. This confirms that what is meant by the narration is individual Romans, and not as a State, and it is obligatory to interpret it in this way in order to reconcile and use all of the evidences – as is well known in *Usul Al-Fiqh*, using the two evidences is better than voiding one of them, and there is no recourse to weighing the evidences unless reconciling them is not possible. Accordingly it is clear that there is no evidence which permits seeking the help of the polytheists as a State; rather the evidences are explicit against that without any restriction.

These are the evidences for this article.

Article 191

The State is forbidden to belong to any organisation which is based on anything other than Islam or which applies non-Islamic rules. This includes international organisations like the United Nations, the International Court of Justice, the International Monetary Fund and the World Bank, and regional organisations like the Arab League.

The subject which the international and regional organisations are established upon has been prohibited by the *Shari'ah*.

The United Nations is established upon the basis of the Capitalist system, which is a system of *Kufr*, above and beyond which it is a tool in the hands of the large nations, particularly

America, which exploits it for the sake of imposing its influence over the smaller nations, which the current states in the Islamic World are a part of.

The International Court of Justice judges with a system of *Kufr*, and going to it for a judgement is to take a judgement from other than what Allah (swt) has revealed.

The International Monetary Fund is established upon giving loans of hard currency with interest, and on a basis of exchange that is forbidden according to the *Shari'ah*, and so it does not give hard currency in exchange for the local currency on the spot, but rather it gives hard currency to the State which is in need of hard currency, in exchange that after a period of time it repays it the equivalent from its own currency with additional interest which is specified. This kind of currency exchange is forbidden since it is a type of currency exchange that has been prohibited, because currency exchange either has to be carried out on the spot without any delay, since if there is a delay it is forbidden as the narration has mentioned. And in the same manner it also includes interest which is also forbidden.

The World Bank is established upon utilising interest, like any other bank.

The Arab League is established upon the basis of the Capitalist system, and it explicitly mentions in its constitution that it is to protect the independence of the Arab states, in other words, the protection of the separation and division of the Islamic lands, which is prohibited.

Similar to the Arab League is the Organisation of Islamic Conference and its like.

For these reasons, it is forbidden for the Islamic State to belong to any of these organisations.

This is the draft constitution, or the necessary evidences for it, and we have clarified the evidences for the rules which are part of the articles of the constitution, and explained what was necessary to be explained, and it is clear that this constitution is an Islamic constitution, in other words, it is composed of *Shari'ah* rules deduced from *Shari'ah* evidences, in other words, from the Book (Quran), the *Sunnah*, the *Ijma'* of the companions, and *Qiyas*. This is why it is a duty upon the Muslims to act according to it.